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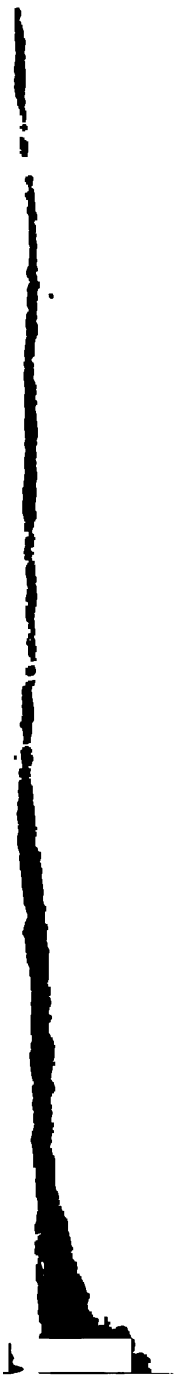

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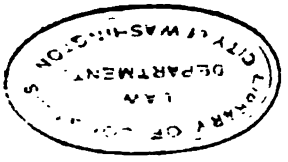
THE STATE OF OHIO.

GENERAL AND LOCAL LAWS

AND

JOINT RESOLUTIONS,



PASSED BY THE

SIXTY-THIRD GENERAL ASSEMBLY,

AT THE REGULAR SESSION,

HELD IN THE CITY OF COLUMBUS, COMMENCING MONDAY, JANUARY 7, 1878.

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GENERAL LAWS.

[House Bill No. 8.]

AN ACT

To amend an act passed April 2, 1866, entitled an act to enroll the militia of Ohio, to organize a volunteer militia and to repeal certain acts therein named. (63 v. 70, S. & S., 449.)

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the first section of the act passed April 2, 1866, entitled "an act to enroll the militia of Ohio, to organize a volunteer militia and to repeal certain acts therein named," be amended so as to read as follows:

Who shall perform military duty.

Section 1. All male citizens of this state, who are eighteen and under forty-five years of age, except persons exempt by law, shall be enrolled in the militia and perform military duty, in the manner hereinafter prescribed.

SECTION 2. Said original section is hereby repealed, and this act shall take effect from its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed January 24, 1878.

[Senate Bill No. 28.]

AN ACT

To authorize compensation to be paid members of board of equalization, and their assistants.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That in each county of this state containing a city of the first class, having a population exceeding two hundred thousand inhabitants, wherein the members of the board of equalization for such city and the assistants of such board, performed services in the year 1877, pursuant to the provisions of the statute relating to annual boards of equalization for cities of the first and second class of this state, and have not been paid for such services, the commissioners of such county be, and they are hereby authorized and in-

Boards of equalization in first-class cities, how compensated.

LAW

structed to pay all the members (except the county auditor) for their services as members of such board of equalization, a sum not exceeding two hundred dollars each, and such assistants of said board as were employed by the auditor of any such county, at the rate of five dollars per day for the time actually employed in such service, said sums to be paid from any funds of the county not otherwise appropriated; and the auditor of the county shall draw his warrant, and the treasurer of the county shall pay the same, upon the order of the county commissioners.

Compensation of auditors' assistants.

SECTION 2. That this act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed February 11, 1878.

[House Bill No. 120.]

AN ACT

To amend an act entitled "an act relating to certain proposed amendments to the constitution and the publication thereof," passed April 30, 1877 (O. L., vol. 74, p. 148), and making an appropriation for publication of said amendments.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That section five of the above recited act be amended so as to read as follows:

Section 5. The charges for publication shall not exceed sixty per cent. of the rates established in section one of the act "to fix the price of legal advertising." passed March 25, 1876. The cost of publishing shall be paid out of the state treasury, upon the warrant of the auditor of state, upon vouchers approved by the commissioners of the respective counties where the publication is made, and in accordance with the measurements made by the supervisor of printing, and for which purpose, the sum of forty-two thousand dollars be and the same is hereby appropriated out of any moneys in the treasury, belonging to the general revenue fund, not otherwise appropriated.

SECTION 2. This act to take effect from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed February 14, 1878.

[House Bill No. 127.]

AN ACT

Making partial appropriations for the year 1878.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That there be and hereby is appropriated, out of any money in the treasury, to the credit of the general revenue fund, and not otherwise appropriated, the following sums, to wit:

For Adjutant General's office:

Expenses of Ohio national guards.

For expenses incurred on account of the first, third, fourth, sixth, seventh, eighth, thirteenth, and fourteenth regiments, and unattached companies, Ohio national guards, called out by order of the governor of Ohio, on requisition of the sheriffs of Licking and Pike counties, and the mayor of the city of Columbus, to aid the civil authorities in preventing threatened violence, and supporting the laws, thirty-four thousand thirty-eight dollars and twenty-five cents ($34,038 25).

For expenses incurred on account of the fifth, eighth, and sixteenth regiments, and unattached companies, Ohio national guards, called out by order of civil authorities, to aid in preventing threatened violence, and supporting the laws, three thousand nine hundred and forty-seven dollars ($3,947.00).

Subsistence.

For subsistence furnished the Ohio national guard, while in the service of the state aiding in preventing threatened violence and supporting the laws, fifteen thousand five hundred and fifty-nine dollars and twenty-nine cents ($15,559.29).

Medical attendance, etc.

For medical attendance, and hospital and other supplies, one thousand two hundred and nineteen dollars and ninety-three cents ($1,219.93).

For transportation, seven thousand seven hundred and eight dollars and thirty-eight cents ($7,708.38).

For expense incurred on account of the fifteenth regiment, called out by civil authority, and other incidental expenses of various forms, five thousand nine hundred and fifty-one dollars and seventy-three cents ($5,951.73).

SECTION 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed February 14, 1878.

[Substitute for House Bill No. 3.]

AN ACT

To establish a board of fire commissioners in cities of the first class having a population of two hundred thousand and over, to repeal section fourteen of an act therein named, and for other purposes.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the management and control of the fire depart-

Creating board of fire commissioners in first-class cities.

ment in all cities of the first-class having a population of more than two hundred thousand, shall be vested in a board of fire commissioners, to consist of five members, and who shall be residents of such city, who shall hold office for the term of five years, except that the term of those first appointed shall be one, two, three, four, and five years respectively, and they shall be appointed by the police judge of such city; and thereafter one member of said board shall be appointed annually by the mayor of such city, by and with the consent of the common council thereof; and all vacancies in said board shall be filled by said mayor in like manner, and all members of said board shall serve without compensation.

Term of office.

How appointed.

Vacancies—how filled.

Organization of board.

SECTION 2. That immediately after the taking effect of this act and the appointment of the commissioners provided for in the first section of this act, said board of fire commissioners shall organize by the selection of one member thereof as president, who shall preside at all meetings of said board, and serve as such for one year. and thereafter a president shall, in like manner, be selected each year.

Powers of board.

Said board shall have power to appoint a fire marshal, who shall be the executive officer of the board, and have the active management of the fire department when in service, and such number of assistant fire marshals as may, in the judgment of said board, be required for an effective management of the department. The term of office of said fire marshal and assistants shall be for three years, and until their successors are appointed and qualified.

Officers and employés—how appointed and duties.

Said board shall also appoint such other officers and employes as may be necessary for the efficient management of the department, who shall hold their positions until removed by death, resignation, inefficiency, or for causes hereinafter specified.

Salaries and duties of fire marshal.

Said board shall fix the salaries and prescribe the duties of the fire marshal and assistants, and of all officers and members of the department, and incompetency, permanent disability, insubordination, or violation of any of the rules and regulations of the board, shall be deemed cause for suspension or dismissal.

Religious or political opinions no cause for removal.

No officer or member shall be appointed, or after appointment be removed on account of his religious or political opinions, nor shall they participate in political conventions or primary convocations of any political party whatever.

Meetings of board.

SECTION 3. The said board shall hold regular meetings at least twice each month, and oftener if deemed necessary by the president. Special meetings may be held on the call of any three members, and notice shall be served upon members of all meetings, whether regular or special.

Expenditures and contracts.

A majority of the members shall be necessary to order the expenditure of money, or to make any contract, and the vote upon the same shall be taken by yeas and nays, and entered upon the minutes.

They shall cause accurate record to be made of all their proceedings, which shall be received as evidence, when certified to by the secretary. They shall have power to make such rules and regulations for the government of the department as may be found necessary, from time to time, which shall have the power and effect of ordinances, when approved by the common council.

Records shall be received as evidence. Rules and regulations.

SECTION 4. The said board shall have power to make all necessary repairs of houses, engines or other apparatus belonging to the department, and to contract, in the name of the city, for new houses or apparatus: provided, that for all contracts exceeding one thousand dollars in amount, the approval of the common council shall first be obtained.

Repairs of engines, houses, etc.

No commissioner or other officer of the board shall be interested in the profits of any contract, and no officer or employé shall have power to incur any liability on account of said board, unless expressly authorized to do so at a meeting of the board.

Board authorized to incur liabilities.

At least ten (10) days' notice shall be given, in some newspaper of general circulation in such cities of the first class, of the reception of proposals for the performance of any contract exceeding one thousand dollars in amount, and said contract shall be awarded to the best and lowest bidder, who shall furnish satisfactory security for the performance of the same; and all contracts exceeding one thousand dollars in amount, shall be subject to the approval of the common council, as aforesaid.

Contracts exceeding $1,000—how awarded and notice.

SECTION 5. The said board shall, annually, certify to the city auditor, at the time prescribed by law, the amount necessary to be levied on the grand duplicate for the support of the department for the ensuing year, and so much thereof as may be allowed by the finance committee of the common council of such cities shall form a part of the levy, and be used exclusively for the use of the board of fire commissioners, and shall be certified to the treasurer of such cities by the auditor thereof, as the fire commission fund, and shall be held by such treasurer as other city funds, subject only to the order of the board of fire commissioners, as herein provided. And any interest received from the deposit of said fund shall be credited to said fund, and from the date of the taking effect of this act, until such tax shall be collected, the officers and members herein named, and all other necessary expenses in anywise arising out of the passage of this act, shall be paid out of the fund that otherwise would be used in such cities for fire department purposes: provided, however, that the amount of levy as above authorized to be certified to the city auditor by the said board of fire commissioners shall in no case exceed the sum of two hundred and twenty-five thousand dollars in any one year. The said board shall have no power to incur any liability on behalf of said cities of the first class beyond the amount so levied or appropriated to their order by the common council; and the purchase of any

Annual levies, how made and collected.

Levies shall not exceed $225,000.

Board shall not incur liabilities, etc.

Purchase of grounds, apparatus, etc.

Locate and build cisterns.

Payments—how made.

additional ground, building of any new house or apparatus, or the establishment of any new company, shall be made by the common council only upon the recommendation of said board. They shall have power to locate and build such fire-cisterns and plugs as they may deem necessary for the better protection of the property of the city. All payments from the fire department funds shall be ordered at a meeting of the board, and shall be made by the treasurer of said city upon the warrant of the city auditor, which shall be drawn in accordance with the order of the board, and certified to in such manner as they may prescribe.

Control of fire alarm telegraph.

SECTION 6. In such cities of the first class as aforesaid, where there now is or may hereafter be established a fire alarm telegraph, attached to said fire department, the same shall be under the control and subject to the regulation of the said board of fire commissioners, and the fire marshal aforesaid shall, by virtue of his office, be the superintendent thereof. Such number of operators and other employés may be appointed by the said board as may be necessary for the management of said telegraph.

Power and duty of fire marshal and assistants.

SECTION 7. The said fire marshal and assistants shall act as fire wardens, under direction of the board, and shall have power to enter and examine any building in which fire is used, and may condemn the same or order it rebuilt or repaired if it be considered dangerous to the public safety.

Complaint of dangerous building.

Whenever complaint is made of the dangerous condition of any building or part thereof, it shall be their duty to immediately examine into the same, and cause the proper measures to be taken to put it in a safe condition.

Examination of causes of fire.

They shall make prompt examination into the cause of every fire occurring within the city limits, and for this purpose are hereby authorized to issue process for and compel the attendance of witnesses, and the production of books and papers, to

Administer oaths, etc.

administer oaths and take testimony, the material points of which shall be carefully entered in a record to be kept for that purpose.

May prosecute owners of unsafe buildings, etc.

They shall also examine into the condition of any building reported unsafe or being erected in violation of law, and shall notify the owners thereof, if found unsafe, to rebuild the same, in default of which they may bring suit against the owners in any court having competent jurisdiction.

Acts repealed.

SECTION 8. That section sixty-one as amended April 20, 1871 (O. L., v. 68, p. 69), of an act entitled "an act to provide for the organization and government of municipal corporations," passed May 7, 1869 (O. L., v. 66, p. 140), is hereby declared not to effect cities to which this act is applicable; that section fourteen of the act relating to the regulation of the police force in certain cities of the first-class, passed March 17, 1877 (O. L., v. 74, p. 55), be and the same is hereby repealed, and the board of police commissioners are hereby relieved from the performance of the duties therein conferred, and all offices therein created or existing

thereunder are hereby abolished; and all other acts and parts of acts inconsistent with the provisions of this act be and the same are hereby repealed.

SECTION 9. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed February 14, 1878.

[House Bill No. 73.]

AN ACT

To amend the third section of an act entitled "an act defining the jurisdiction and regulating the practice of probate courts," passed March 14, 1853, as amended April 9, 1863. (S. & S., page 626.)

Letters testamentary, etc., shall not be issued in certain cases, etc.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That letters testamentary, or of administration, or of guardianship, shall not be issued to any person after his election to the office of probate judge and before the expiration of his term of office; and if any probate judge shall be interested, as heir, legatee, devisee, or in any other manner in any estate which would otherwise be settled in the county where he resides, all such estates, and all accounts of guardians in which said probate judge may be interested, shall be settled by the court of common pleas of such county; and in all such matters and cases in which said probate judge is interested, the original papers connected with said estate shall be by him forthwith certified to the court of common pleas as aforesaid. And in all other matters and proceedings, pending in any probate court, which would properly be disposed of or decided therein, but in which the probate judge thereof may be interested in any manner whatever, as attorney or otherwise, or in which he may be required to be a witness to a will, such probate judge shall upon the motion of any party interested in such proceedings, or upon his own motion, certify said matters and proceedings to the court of common pleas of the same county in which he resides, and he shall forthwith file with the clerk of the court of common pleas of the same county, all original papers connected with said proceedings, and the same shall be proceeded in and heard and determined by the court of common pleas, at chambers, by any judge thereof, or in open court, in the same manner as though said court had original jurisdiction of the subject matter thereof, and upon the final decision of the questions involved in such proceedings, or on the final settlement of the estate in which said judge is interested as executor, administrator or guardian,

Common pleas court shall settle estates where probate judge is heir, etc.

Where papers shall be filed in such cases.

When original papers shall be returned to probate court.

by the court of common pleas, or whenever the interest of the probate judge therein shall cease, the clerk shall deliver all said original papers back to the probate court, from which said papers came, and the clerk shall, also, make out an authenticated transcript of the orders, judgments and proceedings of said court therein, and shall file the same in the probate court from which said papers came, and the judge thereof shall record the same in the ordinary records of similar business.

Clerk shall file authenticated transcript.

Records, etc.

SECTION 2. That said section three, as amended April 9, 1863 (S. & S. stat., p. 626), be and the same is hereby repealed.

SECTION 3. This act shall be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed February 14, 1878.

[House Bill No. 123.]

AN ACT

To redistrict cities of the second class.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That in every city of the second class, which, according to the federal census of 1870, contained more than twenty thousand, and less than thirty thousand and five hundred inhabitants, it shall be the duty of the judge or judges of the court of common pleas, who reside in the county in which said city is situated, within ten days after the passage of this act, to appoint a commission of five citizens, who have resided continuously within the city for which they are appointed, at least five years prior to the passage of this act.

Commission, how appointed.

SECTION 2. Said commissioners when appointed shall take an oath faithfully to discharge their duties with impartiality, and shall immediately redistrict said city into wards, bounded by streets, alleys, avenues, water courses, lot lines, public grounds or corporation lines, composed of adjacent and compact territory, containing as nearly an equal number of inhabitants as may be practicable, and consecutively numbered.

Redistricting the city.

SECTION 3. The commission shall give notice of the proposed changes by publication for two consecutive weeks, in two daily newspapers of general circulation in the corporation, and during said two weeks it shall be the duty of the commission to sit at least a part of each day in some public

Notices of proposed changes, how made.

place, where said commission may hear and consider any complaints, objections, or petitions that may be made against the proposed division of territory; when objections are made by one or more citizens, against any particular division or divisions proposed, it shall be the duty of the commission to carefully examine said objections, and if it appear that for good reasons the objection be well founded, the commission may make such alterations as may be deemed proper, and at the end of said two weeks the commission shall cause copies of the plats of the wards, as finally adopted, to be made, with a description of the boundaries of the same, and shall deposit one copy, certified by them, with the mayor, and another with the city clerk, who shall immediately record the same in the record book of general ordinance.

Commissioners shall hear comp etc.

Alteration may be made.

Plats of wards.

SECTION 4. No election of members of council or board of education or ward officers shall be held until the next ensuing annual election for corporation officers, nor shall the time of office of any member of council or board of education be abridged, and if two or more members of the council or board of education who hold over, reside in the same ward after the redistricting, the commission shall designate what wards are to be represented by them respectively until the expiration of their terms, and notify the mayor, council, and board of education thereof, and new members shall be elected only in the wards left unrepresented after such redistricting.

When elections shall be held, etc.

SECTION 5. The division made by said commission shall have the force and effect as if made by ordinance of council, and said wards shall not again be changed until after the third regular meeting of council after the annual municipal election next after such redistricting.

Force of division.

SECTION 6. This act shall be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem of the Senate.

Passed February 21, 1878.

[Substitute for House Bill No. 42.]

AN ACT

To maintain or assist in maintaining public libraries in certain cities.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That in all cities, which, by the last federal census, had, and all those which hereafter, on the first day of March, in any year, as ascertained by any federal census, may have, a population exceeding ninety thousand and less than two

hundred thousand inhabitants, it shall be lawful to appropriate from the school fund, an amount equal to the proceeds of one-tenth of one mill of the tax levy, to maintain or assist in maintaining the public library, and pay in part the cost and expense of supporting and running any public library in said cities in addition to the one-tenth of one mill now authorized by law to be raised by taxation for that purpose: provided, that this act shall not be construed to authorize any increase in levies for school purposes, including libraries in said cities, over that made in 1877.

Lawful to appropriate one-tenth of one-mill.

Proviso.

SECTION 2. This act shall be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed February 21, 1878.

[House Bill No. 102.]

AN ACT

To ascertain the number of soldiers' unmarked graves in Ohio.

WHEREAS, The sixty-second general assembly, did by enactment, direct the adjutant-general of Ohio, to ascertain and report the number of soldiers' unmarked graves in the various places of interment in the state, in order that steps might be taken to have durable monuments erected above them, and as no appropriation was made to defray the expense, the adjutant-general was compelled to rely upon the coöperation of patriotic citizens in each county to furnish said data, and for this reason the information sought is necessarily incomplete; therefore,

Assessors to ascertain number of unmarked soldiers' graves.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That in addition to the duties of township and ward assessors, as now prescribed by law, it shall be their duty, at the time of taking lists of personal property for the year 1878, to ascertain the number of soldiers' unmarked graves in their respective wards and townships, and return a correct list of the same, giving as far as practicable, the name, age, rank, company, regiment and date of death of each soldier buried therein, to the auditor of their respective counties, at the time of making their return of taxable property.

Duty of county auditor.

SECTION 2. That it shall be the duty of the auditor of each county in this state, within twenty days after the return of the aforesaid list, to forward a correct statement thereof to the adjutant-general.

No add'l compensation allowed.

No additional compensation shall be allowed to any assessor or auditor for the discharge of the duties imposed by this act.

SECTION 3. This act shall be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed February 21, 1878.

[Senate Bill No. 69.]

AN ACT

Supplementary to the act entitled "an act to create a board of public works in certain cities having a population of one hundred and fifty thousand and upwards at the last federal census," passed March 17, 1876.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the board of public works created by the act to which this is supplementary, be and they are, from and after the passage of this act, hereby authorized to appoint and commission the auditor of such city, and said auditor shall thereupon give bond and qualify himself for the office in the manner now provided by law, and he shall hold for the term of three years, perform such duties, and be entitled to such emoluments as may now or hereafter be provided by law or ordinance. Board of public works are authorized to appoint city auditor.

SECTION 2. That the provisions, as to the appointment of city auditor, of section sixty-one of the act entitled "an act to provide for the organization and government of municipal corporations," passed May 7, 1869, as amended April 4, 1872, be and they are hereby declared inapplicable to cities wherein a board of public works has been organized pursuant to the provisions of the act to which this is supplementary. Inapplicable.

SECTION 3. This act to take effect and be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed February 23, 1878.

[House Bill No. 65.]

AN ACT

To amend an act entitled "an act for the relief of the poor, and to repeal certain acts therein named," passed April 12, 1876. (Laws of Ohio, vol. 73, page 236.)

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That section fourteen of the above recited act be amended to read as follows:

Township trustees shall be notified by physician attending pauper.

Liability of township for medical services.

Notice of discontinuance.

Section 14. Whenever any person in the township, shall be in condition requiring public relief, or the services of a physician or surgeon, complaint thereof shall be forthwith made to the township trustees by some person having knowledge of the fact; if medical service is required, the physician or surgeon called or attending shall immediately notify the trustees, or one of them in writing, that he is attending a pauper, and thereupon the township shall be liable for all relief and for services rendered, which may or shall thereafter be afforded to such person, only in such amount as the said trustees may determine to be just and reasonable, but if such notice be not given within three days after such relief is afforded, or service begins, then said township shall be liable for such relief or service only, as may be rendered after notice has been given, but the trustees or one of them, may in any case at any time, order the discontinuance of such services or relief, and they shall not be liable for any services or relief thereafter rendered.

Section 2. That said section fourteen be and it is hereby repealed, and this act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed February 27, 1878.

[House Bill No. 113.]

AN ACT

To provide for the better organization of corporations designated as the widows' home and asylum for aged and indigent women.

May purchase real estate, etc.

Proviso.

Section 1. *Be it enacted by the General Assembly of the State of Ohio*, That corporations existing under the laws of Ohio, designated as the widows' home and asylum for aged and indigent women, in addition to the estates, real, personal, or mixed, which they are now allowed by law to hold, may take by purchase, gift or devise, and hold, use, dispose of, and convey, in all lawful ways, any estate, real, personal, or mixed, which may be convenient or necessary for the use of said corporation, or for the investment of the funds of such corporations; provided, that no part of such estate or the income thereof shall be used for any other purpose or business, than in providing a suitable asylum for the support and maintenance thereof, and for the support and maintenance of such aged and indigent women as shall be admitted into the same under the by-laws thereof.

SECTION 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed February 27, 1878.

[House Bill No 171.]

AN ACT

Authorizing the county commissioners of certain counties, in the state of Ohio, to levy an additional poor tax.

When additional tax for the poor may be levied.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the county commissioners of any county in the state of Ohio, having by the last federal census a population exceeding thirty thousand, and less than thirty-one thousand four hundred, and a duplicate for the year 1877, not exceeding ten millions, may in the year 1878, 1879, and 1880, in addition to the tax authorized by the fourth section of "an act prescribing the rate of taxation for county, bridge, road and township purposes," passed May 1, 1871, levy an additional tax for the poor in such counties, not exceeding three-tenths of one mill on each dollar of the valuation of the property of such counties taxable for state and county purposes, and may borrow money at not exceeding the legal rate of interest in anticipation of the fund arising from such levy.

Not to exceed three-tenths of a mill.

SECTION 2. This act shall take effect and be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed February 27, 1878.

[House Bill No. 5.]

AN ACT

To amend an act entitled "an act supplementary and amendatory of the act entitled an act to amend sections two, four, and twenty-four of an act entitled an act to preserve the purity of elections," passed May 7, 1877 (vol. 74, page 211), and to repeal certain sections thereof.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That section one, of said act, shall be amended so as to read as follows:

Residence in the state required.

No person shall be pemitted to vote at any election, unless he shall have been an actual resident of the state for one year next preceding the election, an actual resident of the county for thirty days next preceding the election and an actual resident of the township, incorporated village, or ward of a city or a village for twenty days next preceding the election at which such person shall offer to vote, except where the person offering to vote in any township, incorporated village, or ward of a city or village, is the head of a family, and has actually resided in the state, and in the county in which such township, incorporated village, or ward of a city or village is situate, the length of time required to entitle a person to vote under the provisions of this act, and shall, bona fide, remove with his family from one ward to any other in such city or village, or from a ward of such city or village to a township or incorporated village in the same county, or from a township or incorporated village to a ward of a city or village in the same county, or from one township to another in the same county, in which cases such person shall have the right to vote in such township, incorporated village, or ward of a city or village, without having resided therein the length of time above described to entitle a person to vote; provided, that such voter so removing with his family from a township to an incorporated village or ward of a city or village in the same county, shall not have the right to vote at any municipal election held in such city or incorporated village, unless he shall have resided therein twenty days prior to such municipal election. In determining the residence of a person offering to vote, the judges of the election shall be governed by the following rules:

Residence in ward, township and village required.

Heads of families may vote.

Removal from ward, township, etc., to another.

Rules governing judges of elections.

Habitation.

1. That place shall be considered and held to be the residence of a person in which his habitation is fixed, without any present intention of removing therefrom, and to which, whenever he is absent, he has the intention of returning.

Temporary absence.

2. A person shall not be considered or held to have lost his residence, who shall leave his home and go into another state, or county of this state, for temporary purposes merely, with an intention of returning.

Family residence.

3. The place where the family of a married man resides, shall be considered and held to be his place of residence, except where husband and wife have separated and live apart, then the place where they resided at the time of the separation, shall be considered and held to be his place of residence, unless he shall afterwards, and during the time of such separation, remove from such place, in which case the county, township, city, or incorporated village, in this state, in which he shall reside the length of time required by the provisions of this section to entitle a person to vote, shall be considered and held to be his place of residence.

Actual residence required.

4. A person shall not be considered or held to have gained a residence in any county, township, city, or incorporated village in this state, into which he shall come for temporary

purposes merely, without the intention of making such county, city, or incorporated village his home.

5. If a person remove to another state, with the intention of making it his permanent residence, he shall be considered and held to have lost his residence in this state.. Removal to another state.

6. If a person remove to another state with the intention of remaining there for an indefinite time, and as a place of present residence, he shall be considered and held to have lost his residence in this state, notwithstanding he may entertain an intention to return at some future period.

7. The mere intention to acquire a new residence, without the fact of removal, shall avail nothing; neither shall the fact of removal without the intention. Acquiring a new residence.

8. If a person shall go into another state, and while there exercise the right of a citizen by voting, he shall be considered and held to have lost his residence in this state. Voting in other states.

SECTION 2. That sections one, two, three, four, five, six, seven, eight, nine, and ten of said act, be and the same are hereby repealed. Sections repealed.

SECTION 3. This act shall be in force and take effect from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed February 27, 1878.

[Substitute for H. B. No. 1.]

AN ACT

To amend sections one, three, four, five, ten, eleven, fourteen, sixteen, seventeen, eighteen, nineteen, twenty-two, twenty-three, twenty-five, twenty-seven, thirty-three, thirty-five, thirty-six, and thirty-eight of chapter two of the act entitled "an act to consolidate, revise, and amend the statutes relating to jails and the penitentiary, to be known as part two, title three, jails and penitentiary," passed May 5, 1877, (O L., vol. 74), to add supplementary sections thirty-nine and forty to said chapter two, and to repeal said original sections one, three, four, five, ten, eleven, fourteen, sixteen, seventeen, eighteen, nineteen, twenty-two, twenty-three, twenty-five, twenty-seven, thirty-three, thirty-five, thirty-six, and thirty-eight.

SECTION 1. (Original Section 1.) *Be it enacted by the General Assembly of the State of Ohio*, That said original section one be amended to read as follows: The government and management of the Ohio penitentiary shall be vested in a board of five directors, to be appointed, within ten days after the passage of this act, by the governor, by and with the advice and consent of the senate—one to hold his office until the first day of April, 1879; one to hold until the first day of April, 1880; one to hold until the first day of April, 1881; one to hold until the first day of April, 1882; one to hold until the first day of April, 1883, and until their successors are appointed and qualified; and thereafter, in the Board of fire directors—how appointed. Term of office.

month of March of each year, the governor shall appoint, by and with the advice and consent of the senate, one member of the board of directors. who shall hold his office for the term of five years from the first day of April, next succeeding, and until his successor is appointed and qualified.

Oath.

Each director, before he enters upon the duties of his office. shall take and subscribe an oath or affirmation of office, which shall be endorsed on his commission.

Election of president and quorum of board.

SECTION 2. (Original Section 3.) The directors shall, at their meeting in the month of May, in each year, elect one of their number president of the board. Three members of the board shall constitute a quorum for the transaction of business; and no order of the board shall be valid unless concurred in by at least three members, and entered on its journals.

How the board to organize and to conduct business.

SECTION 3. (Original Section 4.) The board of directors, within ten days from their appointment, shall meet in the city of Columbus, and elect one of their number president of the board, to serve until the regular meeting in May thereafter, and shall appoint a warden, who shall hold his office for the term of three years from the first day of April after his appointment unless sooner removed by the directors, as provided in section twenty-one; also, a steward, a physician, a chaplain, a clerk, and when the business requires it, an assistant clerk, and an assistant deputy warden, who shall hold their offices for two years, unless sooner removed, as provided in section twenty-one.

Regular meetings of the board and inspections.

SECTION 4. (Original Section 5.) The directors shall meet at the penitentiary, on the first Tuesday of February, May, August, and November, and examine the books and accounts of the clerk and steward. At least three of the directors shall visit the prison in company, on the first Tuesday of each month, and examine all the different departments, and audit all claims against it; and an inspection of the prison shall be made at least once in each month, between the monthly meetings, by a director, on the order of the board.

Warden's accounts to be balanced monthly.

SECTION 5. (Original Section 10.) The warden shall balance his cash account each month, and report the same to the board, if in session, or at its first meeting thereafter; and on the fifth week day of each month, he shall furnish the auditor of state a detailed report of all his receipts during the preceding month, and shall pay into the state treasury so much of the funds in his hands as, in the opinion of the board, is not required for the current use of the penitentiary.

Warden to appoint deputy and other officers.

SECTION 6. (Original Section 11.) The warden shall, by and with the consent of the board, appoint a deputy warden, assistant deputy warden, superintendents of the yard, kitchen, state shops and hospital, a captain of the night-watch, and subject to the right of the board at any time, to order the number increased or diminished, as many guards

as may be necessary, one from each county in the state upon sati-factory application, until the proper number shall have been appointed, who shall hold their offices for the term of two yea:s, unless sooner removed, as provided in section twenty-one.

Duty of the steward.

SECTION 7. (Original Section 14.) The steward shall purchase all the forage, fuel and lights, and all supplies for the kitchen and hospital, and make all sales for the penitentiary, under the written orders of the warden, and subject to such rules and regulations as the board may prescribe. He shall file and preserve all such orders, and keep a full and accurate account of all purchases, and sales made by him, in books to be furnished by the board, or any member of the board; all other articles and supplies shall be purchased by order and under the direction of the board.

Oath of office and bond.

SECTION 8. (Original Section 16.) All persons appointed by the board, or by the warden, by and with the consent of the board, shall take an oath of office, and enter into a bond to the state, that they will faithfully discharge the duties which devolve upon them; the bond of the warden to be in the sum of ten thousand dollars, with two good and sufficient freehold sureties, to be approved by the board and the attorney general; and the bond of the other appointees, with sureties to the satisfaction of the board, to be each in the sum specified, as follows; deputy warden and clerk, three thousand dollars; steward, five thousand dollars; captain of the night watch and superintendents, one thousand dollars, and guards, five hundred dollars. All such bonds shall be drawn by the attorney general, and be deposited with the treasurer of state.

Directors ineligible to certain offices.

SECTION 9. (Original Section 17.) A director shall not be appointed to any other office under this chapter during the period for which he was appointed such director, nor shall any member of his family be appointed to any office or position under such board.

No contractor o person interested in business at the penitentiary shall be appointed to office therein.

SECTION 10. (Original Section 18.) No person shall be appointed to office, at the penitentiary, or be employed thereat on behalf of the state, who is a contractor, or the agent or the employé of a contractor, or who is interested directly or indirectly in any business carried on therein; and should any officer or employé become such contractor, his agent or employé, or interested in such business, it shall be cause for his removal; and no person who is not a citizen of Ohio, or is less than twenty-one years of age, shall be appointed to any office in the penitentiary; nor shall any person be appointed to office, or employed by virtue of this chapter, who is in the habit of using intoxicating liquors, and a single act of intoxication shall justify a removal or discharge.

Officers shall not receive other compensation than herein prescribed.

SECTION 11. (Original Section 19.) No officer shall receive directly or indirectly any other compensation for his services than that herein prescribed, nor shall he receive any compensation whatever, directly or indirectly, for any act or

service, which he may do or perform, for or on behalf of any contractor, or agent, or employé of a contractor. An officer violating this section, shall be dismissed from his office, and a contractor or employé, or agent of a contractor, concerned in such violation, shall be expelled from the penitentiary, and not again permitted within it as a contractor, agent, or employé.

SECTION 12. (Original Section 22.) The officers shall receive the following compensation: The directors in addition to their necessary traveling expenses, shall be paid the sum of three dollars a day, for the time necessarily employed in the discharge of their official duties; the warden eighteen hundred dollars a year; the deputy warden twelve hundred dollars a year; the clerk ten hundred dollars a year; the assistant clerk, at the discretion of the board, not exceeding one thousand dollars a year; the steward twelve hundred dollars a year; the physician, one thousand dollars a year; the chaplain ten hundred dollars a year; the assistant deputy warden, the superintendents of the yard, kitchen, state shops, and hospital, and officers in charge of guard room, seventy-five dollars each a calendar month; the male guards sixty-five dollars, and the female guards fifty dollars each a calendar month. The directors and officers shall be paid monthly out of the state treasury, on warrant of the auditor.

How money drawn from the treasury.

SECTION 13. (Original Section 23.) No money shall be drawn from the treasury, except upon accounts, duly certified by the warden, and approved by at least three directors. A duplicate of every such account shall be filed with the clerk.

Visitors to be charged for admission.

SECTION 14. (Original Section 25.) Visitors may be charged a reasonable sum for going through the prison, which sum shall be prescribed by the board. The warden shall procure suitable tickets, which shall be sold by the clerk, who shall keep an account of such sales, and pay the money to the warden daily. The guard at the door of the guard-room shall receive the tickets, and also keep an account of them in a book as they are received, and return them to the warden each day before the prison is closed.

Hire of convicts authorized.

SECTION 15. (Original Section 27.) To provide for hard labor by each convict, according to his sentence, the board is authorized and required, to let and hire the labor of the convicts upon such branches of business, and for the manufacture of such articles as in its judgment will best accomplish that end, and subserve the interests of the state, which letting and hiring shall be as follows:

Advertised before letting.

1. The letting shall be advertised by the warden in two of the newspapers published in Columbus, and in one each of the cities of Cleveland and Cincinnati, once a week for at least four weeks, and by such further notice as the board may direct. The advertisement shall specify the number of men to be let, the length of time, which shall not exceed five years, and the last day on which bids will be received.

2. The board, in its discretion, may designate what articles or class of articles shall be manufactured.

What bids to contain.

3. Each bidder may separately state in his bid what he will give for the labor bid for, with or without the exclusive right to manufacture the articles specified.

4. Each bid shall specify each class of articles proposed to be manufactured, and the number of square feet of shop-room which will be required.

5. Each bid shall be unconditional.

Price per day to be specified.

6. The price per day for each convict shall be specified; and if a different price per day be stated for different periods, each period and its price must be so stated that one may be accepted and the others rejected; but no bid shall be received, nor shall any contract be made, for a longer time than one year, for less than seventy cents per day, for the labor of each convict. nor shall the labor of convicts, excepting convicts during the first year of their sentence, cripples, females, minors and those disabled by disease or old age, or those entirely unskilled, be temporarily hired at less than that rate.

7. If the person bidding, desires to manufacture different classes of articles, the labor to be employed on each class must be bid for separately.

Bid to be accompanied by bond.

8. Each bid must be accompanied by a bond, with sureties to the satisfaction of the board, that the bidder will comply with the terms of his bid, if it be accepted, which shall be sealed up, and addressed to the warden.

When to be opened.

9. The bids shall be opened by the board at its next meeting, whether monthly or quarterly, after the last day specified for receiving the bids, and the labor shall be awarded to the highest bidder, subject to the following regulations:

Discretion when bills are equal.

(a) As between bids which are for substantially the same price, the board may, in its discretion, give a preference to the one which, in its judgment, will best promote the interests of the state.

(b) As between bids by the same party, one with and the other without the exclusive right to manufacture, the board may accept either.

Bids may be rejected.

(c) The board may reject all bids, if they are for less than a fair and reasonable price for the labor bid for, and shall not be required, in any case, to apportion the labor advertised among the bidders, or any number of them.

(d) Any bid may be rejected, if it be against the interest of the state, or the welfare of the convicts, to manufacture in the prison the articles specified.

Contract to be made on bid taken.

10 When a bid is accepted, and labor awarded to the bidder, the directors, on the part of the state, and the bidder, shall enter into a contract in pursuance of the bid; and such bidder shall also procure a bond, to be executed to the satisfaction of the board, conditioned for the faithful performance of the contract on his part.

Time given successful bidder to get machinery.

11. The board may give to a bidder, after he enters into a contract, a reasonable time to procure machinery and make preparations for manufacturing, not exceeding sixty days from the acceptance of the bid.

12. If a contract be made for the exclusive right of manufacturing the articles therein named, all contracts made subsequently by the same party, and within the same period, and for the manufacture of the same articles, or any of them, shall terminate at the same time with the first contract.

Contractors must manufacture articles according to bid.

13. If a contractor fail to manufacture one or more articles specified in his contract, the board may give him three months' notice to manufacture them, and on failure of the contractor to do so within that period, the right to manufacture them shall cease and determine.

Foreman of shop to take oath of office.

14. The foreman of the shops, of the different contractors, before entering upon their duties, shall take an oath to obey the laws regulating the penitentiary, and to observe all the rules and regulations adopted by the board of directors.

Warden may hire domestics.

SECTION 16. (Original Section 33.) A sufficient number of convicts may be hired by the warden for domestic purposes, on the terms to be agreed upon by him and the board; but no superintendent of the kitchen or state shops, captain of the watch, or male guard shall board in the institution. The female guards may, in the discretion of the board, be permitted to board themselves in the female prison department. No officer shall be required to board in the institution, except the warden. The board shall provide for the lodging of such number of guards as may by them be required to remain at the prison during the night.

Rules for treatment of prisoners.

SECTION 17. (Original Section 35.) In the treatment of prisoners, the following general rules shall be observed:

1. Each convict shall be provided with a bed of straw, or other suitable material, and sufficient covering, with garments of coarse material, and with sufficient plain and wholesome food, of such variety as may be most conducive to health.

2. If a prisoner is sentenced to solitary confinement, the sentence shall be executed, subject to the right of the board to modify it so far as may be necessary to prevent any serious injury to health. No unnecessary labor shall be required of any convict on Sunday.

Punishment.

3. No punishment shall be inflicted except by the order and under the direction of the warden or deputy warden.

4. All money in possession of a prisoner when delivered at the penitentiary shall be properly entered on the clerk's book, and, if not otherwise disposed of by the prisoner, shall be deposited in the treasury by the warden, with other funds in his hands.

Rules to be printed and hung up.

5. The rules and regulations prescribing the duties and obligations of the prisoners, shall be printed and hung up in each cell and shop.

6. Each convict, when he leaves the penitentiary, shall receive a suit of citizens' clothes, and the money taken from him when he entered, and which was not disposed of by his order. and what may have been awarded him by the board for good behavior and diligent labor.

Convicts leaving penitentiary furnished with clothing, etc.

7. If a convict be insane at the time of the expiration of his sentence, the warden shall give notice, in writing, to the probate judge of the county from which he was sent, of the fact of such insanity; and such judge shall forthwith issue his warrant to the sheriff of such county, commanding him to remove such insane convict, and return him to such county. Upon receipt of such warrant, the sheriff shall execute the same forthwith, and make return thereof to the probate judge by whom it was issued; and thereupon the probate judge shall immediately order such insane person to be confined and provided for as directed by the twenty-fifth section of an act entitled "an act to provide for the uniform government and better regulation of the lunatic asylums of the state, and the care of idiots and the insane," passed April 7, 1856, (53 v. 81), and the sheriff shall receive the same compensation as for transferring a prisoner to the penitentiary, and the auditor of the county shall draw an order upon the county treasurer for the amount. If any probate judge, after having been so notified by the warden, neglect to issue his warrant as herein provided, or if any sheriff neglect to remove such insane convict, as required by the provisions of this section, the warden shall cause such insane convict to be removed and returned to the county from which he was sent, in charge of an officer of the penitentiary, or some other suitable person; and the cost of such removal, shall be paid out of the county treasury, upon the warrant of the county auditor.

Insane convicts.

SECTION 18. (Original Section 36.) In order that good behavior may be properly rewarded, the board shall provide in its rules and regulations for a correct daily record of the conduct of each prisoner, and his fidelity and diligence in the performance of his work; and each one who is sentenced, for a definite time shall be entitled to diminish the period of his sentence, and receive a portion of his earnings, and be restored to citizenship, under the following rules and regulations:

Daily record of behavior.

1. (*a*) For each month, commencing on the first day after his arrival at the penitentiary, during which he has not been guilty of a violation of discipline, or of any of the rules of the prison, and has labored with diligence and fidelity, he shall be allowed a deduction of five days, from the period of his sentence, and a portion of his earnings, not exceeding one-tenth of the average price of convict labor.

Sentence shortened by good behavior.

(*b*) At any time after a convict has passed one full year of his sentence, in which he has not been guilty of a violation of discipline or any of the rules of the prison, and has

labored with diligence and fidelity, the deduction shall be seven days, from the period of his sentence, for each month.

(*c*) After he shall have passed two full years as above, the deduction in his sentence shall be nine days for each month.

(*d*) After he shall have passed three or more full years as above, the deduction shall be ten days for each month.

Violation of rules—what convict forfeits.

2. For every violation of the rules and discipline or for want of fidelity and care in the performance of work, the convict shall not only forfeit all gained time and earnings for the month in which the delinquency occurs, but, according to the aggravated nature or frequency of his offenses, the board may deduct a portion or all of his previously earned time or money, or both of them.

Entitled to certificate for good behavior.

If a convict pass the entire period of his sentence without any violation of the rules and discipline, he shall be entitled to a certificate thereof from the warden, and on presenting it to the governor, he shall receive a pardon, and be restored to citizenship.

Sickness.

4. If he be prevented from laboring by sickness or other infirmity, not intentionally produced by himself, or for other cause for which he is not responsible, he shall be entitled by good conduct, to the same deduction from his sentence each month, as above provided for.

Directors to allow sick prisoners, etc., money.

5. If he be unable to earn anything by reason of sickness or infirmity, during his confinement, and his conduct has been good, the board may allow him a sum sufficient to defray his expenses to the county where he was convicted.

Board may repair or rebuild shops.

SECTION 19. Original Section 38.) If any of the shops or buildings in which the convicts are employed, be destroyed or injured by fire, they may be rebuilt or repaired immediately, under the direction of the board.

Physician to keep record of vital statistics.

SECTION 20. (Supplementary Section 39.) It shall be the duty of the physician to keep a trustworthy record of vital statistics of the prison, embracing the name, nationality, or race, the weight, stature, and former occupation and family history of each prisoner; also a statement of the condition of the heart and lungs, and other leading organs, the rate of the pulse and respiration, of the measurement of the chest and abdomen, condition of the inguinal canal and the arch of the foot, and any existing disease or deformity, or other disability acquired or inherited, and shall perform such other duties in the line of his profession as may be required by the board.

Officers to hold office until successors are qualified.

SECTION 21. (Supplementary Section 40) The present officers of the penitentiary shall hold their offices until their successors are appointed and qualified.

SECTION 22. That said original sections one, three, four, five, ten, eleven, fourteen, sixteen, seventeen, eighteen, nineteen, twenty-two, twenty-three, twenty-five, twenty-seven, thirty-three, thirty-five, thirty-six and thirty-eight, of chapter two, of "an act to consolidate, revise, and amend the statutes re-

lating to jails and the penitentiary, to be known as part two, title three, jails and the penitentiary," be and the same are hereby repealed.

SECTION 23. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed February 27, 1878.

[Senate substitute for House Bill No. 27.]

AN ACT

Supplementary to an act entitled "an act to provide for the creation and regulation of incorporated companies in the state of Ohio," passed May 1, 1852, (S. & C. 271), and to repeal section eleven of "an act entitled an act to incorporate the Beverly College," at Beverly.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That section eleven of said act entitled an act to incorporate the Beverly College, at Beverly, be and the same is hereby repealed.

Vacancies in boards of trustees of colleges, how filled.

SECTION 2. Whenever there has or shall hereafter occur a vacancy, in whole or in part, of the board of trustees of any college, seminary, or academy, incorporated under the laws of Ohio, by reason of an amendment of the charter of such corporation, or from any other cause, and there shall be no provision of law for filling said vacancy, then the governor of the state of Ohio shall, within three months after receiving information of such vacancy, appoint twenty-one trustees, to serve as follows, to wit: Seven for one year, seven for two years, and seven for three years, with power to elect (themselves) seven trustees annually, to serve for the term of three years from the time of said appointment, said trustees to have power to fill all vacancies caused by death or resignation.

Term of trustees.

SECTION 3. This act shall be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed March 1, 1878.

[House Bill No. 143.]

AN ACT

To provide for keeping in repair the gravel and macademized and volunteer roads, located and constructed under the laws of the state, and to repeal certain acts therein named.

The several townships of certain counties (Darke and Shelby) made special road districts.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio.* That the several townships within the counties of this state, having a population at last federal census of not more than thirty-two thousand three hundred, or less than thirty-two thousand two hundred and fifty, also counties having a population of more than twenty thousand seven hundred, and less than twenty thousand seven hundred and forty-nine, in which any free or volunteer turnpikes are located and constructed, under an act passed March 29, 1867, and the amendatory and supplemental acts thereto, also any toll roads, converted into free roads, under the act to provide for the keeping in repair of, and converting toll pikes into free pikes, passed May 7, 1869, and the amendatory and supplemental acts thereto, is hereby made a road district, for the care and supervisorship of a pike superintendent, hereafter provided for.

Township pike superintendents to be appointed.

SECTION 2. The county auditor shall, upon the taking effect of this act, immediately notify the township clerks within his county of the necessary election of a township pike superintendent, and upon receiving said notice from the auditor, he shall immediately notify the township trustees of such fact, who shall, at their next annual meeting on the first Monday of March next, order the election of one pike superintendent, to be elected at the annual spring election for township officers, and to serve for one year, and they shall order such election annually thereafter.

The oath and bond.

SECTION 3. Each person so elected shall, before entering upon the duties of his office, take an oath or affirmation to faithfully discharge the duties thereof, and he shall give bond to the state of Ohio, in the sum of two thousand dollars, with security as the trustees shall require, and every such bond to be carefully filed with the township clerk.

Township pike superintendent to have control of improved roads.

SECTION 4. When properly qualified, the pike superintendent shall have full control of all such improved roads as are herein provided for within his township, and shall keep them in good repair and condition for all kinds of public travel, and for this purpose he shall have all the powers and privileges of road supervisors, for drainage, and the removal of timbers, logs, cord-wood or other obstructions that may, from time to time, be found within the limits of the road; he shall have power, subject to the will of the commissioners, to contract for all material necessary for repairs, and in case of freshets or floods, giving rise to breaks in road bed, or washing off large quantities of gravel, he may contract for repairs, either for day or job work, certifying the same, with

amount due under such contract, to the county auditor, who, upon order of county commissioners, shall issue an order on the county treasurer for the amount so certified, or so much thereof as shall be allowed by them in favor of the party to whom such certificate was issued.

Two days labor to be done under his direction.

SECTION 5. The township trustees shall provide for keeping in repair such improved roads within their township, and for that purpose shall set off persons who shall perform their two days' labor as required by law, and also labor in commutation of taxes, the same to be worked out under direction of the pike superintendent, who is hereby authorized to give receipts therefor, as other road supervisors, which receipt shall be receivable for taxes at treasurer's office, if presented by the owner, or his authorized agent, of the lands on which the tax was levied, and the trustees shall give the pike superintendent the use of any plows, scrapers, or other implements owned by the township for road purposes.

Vacancy in office of pike superintendent, how filled.

SECTION 6. Should a vacancy occur in the office of pike superintendent, by death, resignation, or otherwise, the trustees of the township wherein such vacancy occurs shall appoint some suitable person to fill the vacancy; the person so appointed shall, before entering upon the duties of his office, qualify himself, and shall be under the same restrictions and penalties as though he had been duly elected.

Penalties for neglect of duty of pike superintendent.

SECTION 7. That any pike superintendent who shall neglect or refuse to perform the duties enjoined on him by this act, or who shall, under any pretense whatever, give or sign any receipt or certificate for labor or work performed, money paid or material furnished, unless the labor shall have been performed, money paid or material furnished, before the giving or signing such receipt or certificate, shall forfeit for every such offense not less than five dollars, nor more than fifty dollars, to be recovered by an action before any justice of the peace within the township where such pike superintendent may reside, and it is hereby made the duty of the trustees of the township to prosecute all offenses against the provisions of this act.

County commissioners to levy additional tax sufficient to keep improved roads in repair.

SECTION 8. If the tax and labor provided for in section five of this act be found insufficient to keep said improved roads in good repair, then it shall be the duty of the county commissioners to determine and levy such an additional per centum of pike repair tax as will be found necessary to keep said roads in good repair and condition for public travel, said levy to be made upon all the taxable property of the county, not exceeding one mill on the dollar in any one year; the same shall be collected as other taxes, and to be paid out by the county treasurer to the various pike superintendents in such sums and proportions as the commissioners may direct, they having first determined what proportion of said fund shall be set apart to the credit of each township; the commissioners in determining the division of this fund shall be governed not by the miles of pike in each township,

Division of fund between townships.

but by necessities of the roads, the convenience of getting material, the quality of material necessary to make substantial repairs, etc., and thus make a just and equitable division of said fund between the several townships, to be paid the superintendents on warrants of the auditor.

Pike superintendent to make report to county commissioners.

SECTION 9. Each pike superintendent shall, at the regular meeting of county commissioners in March of each year, render an account to them of all moneys drawn by him from the county treasurer, how expended, to whom paid, and for what purpose so paid, together with a detailed statement of his official transactions, including the number of miles of improved roads in the township, the number of miles in each road separate, with the aggregate expense incurred in repairs, the expense of each road separate, also the number and names of persons having performed their two days' labor under his direction, and the name and number of persons having received certificates of having performed labor in commutation of road tax, and the amount of each certificate, also on what road such labor was performed, and the convenience of getting material for repairs, as well as the condition of each road on settlement day. The correctness of said report must be sworn to by the said superintendent.

What report to contain.

Compensation of pike superintendent.

SECTION 10. That each pike superintendent shall receive for his services under this act, one dollar and seventy five cents per diem, for the time actually employed in the care of such roads, and no more, which shall be paid out of the funds created by this act.

Duty as to repairs of bridges, culverts, etc.

SECTION 11. The said pike superintendent shall build and keep in repair all culverts necessary for the travel and convenience of said improved roads. His authority shall extend to repairs in bridges, building and repairing culverts, in all cases wherein the expenditure of money necessary does not exceed thirty-five dollars. He shall have power to contract for the necessary material and labor therefor, and certify the same to the commissioners, as provided for in section four of this act. All contracts for labor and material employed in the repair or building of culverts, repair of bridges, to be paid for out of bridge fund of the county.

Labor and repairs on roads to be applied by first of September of each year.

SECTION 12. The labor provided for in section five of this act, together with the repairs otherwise provided for, shall all be applied upon the roads by the first of September of each year, except the item of culverts and bridges, which is made the imperative duty of pike superintendent, at all seasons of the year, to see that they are kept in repair, also, as is provided for in section four of this act, in case of damage to road by flood or high water, he is required to make such repairs at any time the public convenience require it.

Proviso.

Repealing clause.

SECTION 13. That so much of the act entitled "an act to provide for the repair of free turnpike roads in certain counties," passed May 2, 1877, as conflicts with the requirements of this act, be and the same is hereby repealed.

SECTION 14. This act shall take effect and be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed March 2, 1878.

[House Bill No. 48.]

AN ACT

To amend section thirteen of an act entitled an act relating to roads and highways, passed March 9, 1868.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That section thirteen of the above recited act be amended so as to read as follows:

Section 13. The township trustees shall cause to be erected and kept in repair, at the expense of the township, at all such fork and cross roads as in their judgment public conveniencies require, a post and guide or finger-board, containing an inscription in legible letters, directing the way and distance to the town or towns, or public place or places situated on each said road.

Guide boards at cross-roads to be erected.

SECTION 2. Original section thirteen of the above mentioned act be and the same is hereby repealed.

SECTION 3. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed March 4, 1878.

[House Bill No. 183.]

AN ACT

To amend sections two and three of an act entitled "an act prescribing the rate of taxation for county, bridge, road and township purposes and to repeal certain acts therein named," passed April 19, 1877. (O. L., 74, page 95.)

SECTION 1. *Be it enacted by the General Assemby of the state of Ohio*, That section two of the above recited act be so amended as to read as follows:

SECTION 2. That the commiss oners of the several counties of this state are hereby authorized, at their March session, annually, to levy a tax for road and bridge purposes, as follows:

In counties where the taxable property exceeds the sum of one hundred and twenty millions of dollars, not more

than three-tenths of one mill; and in counties where taxable property exceeds the sum of eighty millions of dollars, and less than one hundred and twenty millions of dollars, not more than five tenths of a mill; and in counties of fifty millions of dollars of taxable property, and less than eighty millions of dollars of taxable property, not more than seven-tenths of one mill; in counties of less than fifty millions of dollars of taxable property, and more than twenty millions, not more than one mill and one-tenth of a mill; in counties where the taxable property is less than twenty millions of dollars, and over ten millions, not more than one and five-tenth mills; in counties where the taxable property is less than ten millions of dollars, and over five millions, not more than three mills; in counties where the taxable property is less than five millions of dollars, not more than five and five-tenths mills, and the auditor of the county shall place the same on the tax duplicate of the current year, to be included in and collected in the June installment of taxes, except as otherwise provided by law.

Annual levy for road and bridge purposes.

Amount set apart for repairing bridges.

The county commisioners shall set apart such portions of the road tax by them levied, as they may deem proper, to be applied to the building or repairing of bridges in their respective counties, which portion so set apart shall be called a bridge fund, and shall be entered on the duplicate of taxes for the county, by the auditor of the county, in a separate column from the other levies, for road purposes, and shall be collected in money, and expended, except as may be otherwise provided by any local law heretofore enacted under the direction of the commissioners of the county, in the building or repairing of bridges and culverts, or both in their respective counties; Provided, that in case an important bridge belonging to or maintained by any county, has been, or hereafter may be destroyed by any casualty, or has been or may hereafter become dangerous to public travel, by decay or otherwise, and the restoration thereof may be necessary for the public accommodation, the commissioners of such county may levy a special tax for that purpose, not exceeding one and one-half mill on the dollar, of the taxable property of such county, the proceeds of which tax shall be applied solely to the restoration of such bridge or bridges, and the commissioners may anticipate the collection of such tax by borrowing any sum not exceeding the amount so levied, or to be levied, at any rate of interest not exceeding seven per cent., annually, and issue notes or bonds therefor, payable upon the collection of such tax; provided, further, that nothing herein contained shall effect the right of city councils to receive and expend the proportion of levies herein, as authorized by the six hundred and forty-first section of the municipal code.

Special levy where important bridge is destroyed by casualty.

May borrow amount of special levy.

Proviso.

SECTION 2. That section three of said act be amended so as to read as follows:

SECTION 3. The county commissioners of any county shall not levy any tax or appropriate any money for the purpose of building public county buildings, purchasing sites therefor, or for lands for infirmary purposes, or for building any bridge, except in cases of casualty, as provided for in section two (2), the expense of which shall exceed ten thousand dollars, without first submitting to the qualified voters of said county the question as to the policy of building any public county building or buildings, or for purchasing sites therefor, or for the purchase of lands for infirmary purposes by general tax, which said submission shall be made at any annual April or October election after the passage of this act Each proposition shall be separately submitted, and printed tickets shall be provided by the said county commissioners, on which shall be printed, 'For Tax," "Against Tax," which blanks shall be filled with the proper designation of the proposed improvement, as the notice may require, and said commissioners shall cause the same notice for such vote to be given as is required in the election of state and county officers. It shall be the duty of the judges of election in the several townships and wards in any county in which such question may be submitted as aforesaid, to open a poll for taking said vote, and to receive and count the ballots cast, and within three days thereafter to return to the auditor of the county a full and correct abstract of said votes, and the said judges of election, shall in all respects, be governed by the laws regulating general elections, and shall be entitled to the same compensation for returning said poll books, which shall be paid out of the county treasury, on the order of the auditor, and the poll books so returned, shall, within five days from the day of holding such election, be opened, and the votes counted by the commissioners and auditor of the county, a correct statement of the result of which vote shall be kept by said auditor, on file in his office for public inspection. If a majority of the votes so cast shall be against the policy of such improvement, the commissioners shall not assess any tax for that purpose, but the commissioners may, on the petition of not less than one hundred tax payers of said county, again submit the same question, at any April or October election after the passage of this act, under the same rules and regulations as before provided; if at any such election a majority shall be found in favor of the improvements as aforesaid, then the commissioners shall be authorized to proceed to levy the tax as provided for in this section, and for the purpose of said improvement; provided, that this section shall not apply to the construction of any public buildings or bridges commenced or contracted for prior to the passage of this act, or for which the commissioners have in good faith purchased the ground, or acquired

Except in case of casualty commissioners not to levy tax to exceed ten thousand dollars for county buildings, infirmaries, bridges, etc., without submitting the same to a vote of the people.

Submission at general election.

Tickets how printed.

Votes.

Duty of judges of election.

Judges of election how governed, their compensation.

Vote to be counted by commissioners and auditor.

If proposition lost, may be again submitted, when.

Proviso.

material for the same, and are now proceeding, during the present season with all convenient dispatch to contract.

Acts repealed.

SECTION 3. That sections two and three of said acts be and the same is [are] hereby repealed; provided, that nothing herein contained shall be held to impair the validity of any levy of tax heretofore made.

SECTION 4. This act shall take effect from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed March 4, 1878.

[House Bill No. 71.]

AN ACT

To amend section one of an act to amend sections one and four of an act entitled "an act to provide for the repair of free turnpike roads in certain counties, and to authorize the county commissioners of any county in this state to constitute a board of directors to regulate the hauling of heavy burdens on any free turnpike or improved road," passed and took effect April 20, 1874; passed March 17, 1875. (O. L., vol. 72, p. 59,) passed April 3, 1876; (O. L., vol. 73, p. 151,) passed May 2, 1877; (O. L., vol. 74, p. 153,) and for other purposes.

County commissioners to constitute a board of turnpike directors in certain counties.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That by virtue of their office the commissioners of any county having a population of more than fifteen thousand six hundred and fifty, and less than twenty thousand seven hundred; also counties having a population of twenty thousand seven hundred and forty-five, and less than twenty-one thousand seven hundred and fifty; also counties having a population of more than twenty-one thousand seven hundred and fifty-five, and less than twenty-one thousand eight hundred; also counties having a population of more than twenty-one thousand nine hundred and twenty, and less than twenty-five thousand one hundred and seventy; also counties having a population of more than twenty-five thousand one hundred and ninety, and less than twenty-eight; also counties having a population of more than twenty-nine thousand one hundred, and less than thirty-two thousand; also counties having a population of more than thirty-two thousand one hundred, and less than thirty-two thousand seven hundred and fifty; also counties having a population of more than thirty-nine thousand nine hundred, and less than forty thousand six hundred, at the last federal census, are hereby constituted a board of turnpike directors, under whose management and control all free turnpikes in such counties, shall be exclusively vested. That it shall be the duty of such directors, at their first meeting of such board, to

divide the county into three districts, as near equal in number of miles of turnpike, and conveniently located, as may be practicable, and each director shall have the personal supervision of one of such districts, subject to all rules and regulations that may from time to time be agreed upon by said board. It shall be their duty to hold a meeting as such board, at such time, within sixty days after the passage of this act, as they may determine, and at least once in three months thereafter, at their office at the county seat of the county, and shall be governed in all transactions of business by the rules governing county commissioners. They shall have power to appoint suitable persons to superintend the work of repairs on the several turnpikes, and the auditor of the county shall serve as clerk of said board, who shall record the proceedings of said board in a book to be provided for such purpose by the county commissioners, which shall be open for examination to all persons interested. They shall cause notice to be published in at least one newspaper of general circulation in the county, of such rules as may be adopted for the regulation of labor and travel on said turnpikes, notice of the regular meetings of said board, and on or before the second Tuesday of April in each year, a statement of receipts and expenditures, in detail, for the year. They shall have power to contract for labor and material, either at public sale or private contract, as may best subserve the interest of the different roads, and shall certify to the county auditor on or before the first Monday in June, in each year, the amount of money necessary, for the purpose of keeping such turnpikes in good repair: provided, that when in the opinion of said board, the interests of any of said turnpikes require, they are hereby authorized to enter upon any lands in said county, and take the gravel or other material necessary for the repair of said turnpikes, and shall give a certificate to the owner or owners of such material, so taken, which shall state the value thereof, together with the amount of damage to said lands by reason of the removal of said material, and the county auditor, upon the presentation of said certificate shall issue an order on the county treasurer for the amount so certified, who shall pay the same out of the turnpike fund: provided, further, that in case said owner or owners are not satisfied with the value so certified by said board, shall have the right to appeal to the probate court of said county, subject to all the provisions of the statutes now in force, relating to the condemnation of material for road purposes: provided, further, that a notice of such appeal shall be filed with the probate judge of said county, within ten days after the delivery of said certificate.

Their duties and powers.

To regulate labor and travel on turnpikes.

May enter upon land for material for repairs, and certify value to owner.

Owners of land or material may appeal to probate court.

SECTION 2. That the commissioners are hereby authorized and required to keep in repair, such portions of free turnpike roads, within their respective counties, that have since their completion or may hereafter be completed and included, within the corporate limits of any city, town or village, in such

Commissioners to keep turnpikes in repairs.

counties to points therein, where the sidewalks have been curbed and guttered, and no further.

Commissioners to apportion funds.

SECTION 3. That in all counties heretofore wherein the commissioners thereof were, by virtue of their office, constituted a board of directors for keeping in repair the turnpike roads within their respective counties, and who are not now by law such board, and who will not by the passage of this act be made such board, and wherein there is an accumulated fund in the hands of the treasurer thereof, for the purpose of keeping in repair the turnpike roads within their county, that they be required, and it is hereby made their duty, to apportion said fund to the different townships within their county, according to the number of miles of turnpike roads therein contained. And they shall direct the county auditor to draw a warrant on the county treasurer, payable to the treasurer of each respective township for the amounts so apportioned to be used in keeping in repair the turnpikes therein contained, as are by law in such cases made and provided, and for no other purpose.

Repealing clause.

SECTION 4. That section one of the act to which this is an amendment, and all other acts in conflict with this act, be and the same are hereby repealed.

SECTION 5. This act to take effect from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed March 4, 1878.

[Substitute for House Bill No. 194.]

AN ACT

Making appropriations for deficiencies, and partial appropriations for the year 1878.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That there be and hereby is appropriated, out of any money in the treasury to the credit of the general revenue fund, and not otherwise appropriated, the following sums, to wit:

FOR DEFICIENCIES.

For Adjutant-General's Office:

Adjutant general's office.

Contingent expenses, one hundred and fifty dollars.

For payment of Ohio national guard while in camp, fifteen thousand dollars.

For uniforms for Ohio national guard, six thousand dollars.

For labor at state arsenal, three hundred dollars.

For repairs at state arsenal, two hundred and eighty-nine dollars and forty-nine cents.

For care of state house and grounds, three hundred dollars.

For wages of employés of state house and grounds, five hundred dollars.

For repairs of roof and terrace of state house, fifty-five dollars and eighteen cents.

For mantel and grate for room of commission to revise the laws, one hundred and thirty dollars and seventy cents.

For carpet for same, one hundred and seventy-four dollars and eighty-one cents.

For R. Read, for plumbing and gas fitting, four hundred and forty-three dollars.

For Auditor of State:

Auditor of state.

For contingent expenses, five hundred dollars.

For Commission to Revise Laws:

Commission to revise laws.

For salaries of commissioners, twenty-seven hundred and sixty-two dollars and fifty cents.

For salaries of clerks, thirty-six hundred and ninety dollars and forty-seven cents.

For contingent expenses, seventy-eight dollars and ninety-eight cents.

For Commissioner of Railroads and Telegraphs:

Commissioner of railroads and telegraphs.

For salary of clerk, one hundred dollars.

For Commission of Fisheries:

Commission of fisheries.

For material and labor, two thousand dollars.

For the Legislature:

Legislature.

Per diem and mileage of the members of the general assembly, twenty-one thousand dollars.

For contingent expenses, two hundred dollars.

For Geological Survey:

Geological survey.

For preparing reports, six hundred and fifty dollars, which amount shall not be paid until the copy is furnished to complete volume three of geology, being the fifth volume of their report.

For Governor:

Governor.

For contingent fund, four hundred and twenty dollars.

For Inspector of Mines:

Inspector of mines.

For contingent expenses, one hundred dollars.

For State Library:

State library. For expense in putting in a grate and mantel, one hundred and thirty-seven dollars and thirty-two cents.

For Secretary of State:

Secretary of state. For Sayler's statutes, forty-eight hundred dollars.

For six copies of Walker & Bates' digest, seventy-two dollars.

For Supervisor of Public Printing:

Supervisor of printing. For advertising free banking act, ten thousand dollars, in pursuance of an act to authorize free banking, passed April 24, 1877.

For Supreme Court:

Supreme court. For contingent expenses of clerk, forty-eight dollars and seventy cents.

Supreme court commission. *For Commission to aid the Supreme Court:*

For salary of clerk, twenty dollars and seventy-one cents.

For Tobacco Warehouse.

Tobacco warehouse. To complete the same, seven thousand nine hundred and ninety-nine dollars and ninety-nine cents.

To furnish same, three hundred dollars.

For Labor Statistics:

Labor statistics. Salary of commissioner, fourteen hundred and sixteen dollars and sixteen cents.

For traveling expenses, forty-two dollars and fifty cents.

For contingent expenses, one hundred and twenty-eight dollars, and thirty-five cents.

For Commissioner on Hog Cholera:

Commissioner hog cholera. For A. H. Tuttle, twenty-eight days' service and expenses, three hundred and forty-three dollars.

Miscellaneous:

Miscellaneous. For M. Finnegan, stone in Ohio house at centennial, eighty four dollars and fifty cents.

For A. J. Rickoff, expenses as a manager, etc., at centennial exhibition, one hundred and twelve dollars.

SECTION 2. That there be and is hereby appropriated out of any money in the treasury, to the credit of the asylum fund, and not otherwise appropriated, the following sums, to wit:

For the Athens Hospital for the Insane:

Athens asylum. Current expenses, seven thousand dollars.

For the Columbus Hospital for the Insane.

Columbus hospital for the insane.

Building fund on claim of Beaver & Butts, work, and material, thirty-five thousand five hundred and eighty-five dollars and eighty-three cents.

Current expenses, fifteen thousand dollars.

Sewerage and water supply to be expended under the joint direction of the trustees of the Columbus hospital for the insane, and the asylum for imbecile youth, two thousand dollars.

For Dayton Hospital for the Insane:

Dayton asylum.

For ordinary repairs, one thousand dollars.

For Lucas County Insane Asylum:

Lucas county asylum.

Maintenance of insane for state, one hundred and nineteen dollars and ninety eight cents.

For Industrial School for Girls:

Industrial school for girls.

For salaries, one hundred and twenty-five dollars.

For State Reform School for Boys:

State reform school for boys.

To complete payment for furnishing new building, four hundred dollars.

For Soldiers' and Sailors' Orphans' Home:

Soldiers' orphans' home.

Current expenses, twenty-five hundred dollars.

For ordinary repairs, five hundred dollars.

Fences and walks, two hundred dollars

Support of orphans outside of home, twenty-two hundred dollars.

For Ohio Penitentiary:

Ohio penitentiary.

For new cells, twenty-one thousand three hundred and seventy-nine dollars and seventy-six cents, said sum not to be paid until the attorney-general shall decide that the amount is due, under the contract, and plans and specifications.

For Toledo House of Refuge:

Toledo house of refuge.

For support of boys under contract, four thousand seven hundred and ninety-one dollars and fifty cents.

SECTION 3. That there be and is hereby appropriated out of any money in the treasury to the credit of the general revenue fund, and not otherwise appropriated, the following sums, to wit:

PARTIAL APPROPRIATIONS FOR 1878.

For Adjutant-General's Office:

Adjutant-general.

Salary, five hundred dollars.
Salaries of clerks, four hundred and forty-six dollars and ninety-three cents.
Contingent expenses, two hundred dollars.
For labor at state arsenal, three hundred and fifty dollars.

For State House and Grounds:

State house and grounds.

For care of state house and grounds, six hundred dollars.
Wages of employés, one thousand dollars.
For heating apparatus, five hundred dollars.
Policeman, one hundred and seventy dollars.
Water rent, two hundred and fifty dollars.
For making a passage between the senate and house of representatives, constructed under senate joint resolution number eight, to be paid when said work is accepted by the adjutant-general, seven hundred and twenty-five dollars.
For furniture for senate committee room, seventy-five dollars.

For Attorney-General:

Attorney-general.

Contingent expenses, two hundred dollars.
Salary of clerk, one hundred and fifty dollars.

For Auditor of State:

Auditor of state.

Salaries of clerks, three thousand dollars.
Contingent expenses, five hundred dollars.

For Board of Public Works:

Board of public works.

Salaries of members, six hundred dollars.
Salaries of engineers, nine hundred dollars.
Salary of secretary, three hundred and seventy-five dollars.

For Commissioner of Common Schools:

Commissioner of common schools.

Salaries of clerks, eight hundred dollars.
Traveling fund, one hundred dollars.
Contingent fund, one hundred dollars.

For Commission of Fisheries:

Commission of fisheries.

For material, labor, etc., one thousand dollars.

For Commission to Revise the Laws:

Commission to revise the laws.

Salaries of commissioners, two thousand dollars.
Salaries of clerks, fifteen hundred dollars.
Contingencies, one hundred dollars.

Commissioner of Railroads and Telegraphs:

Commissioner of railroads and telegraphs.

Salary of clerk, three hundred dollars.
Case for reports, seventy-five dollars.

For Governor's Office:

Governor's office.

Salary of executive clerk, three hundred and seventy-five dollars.
Contingent expenses, three hundred dollars.

For Insurance Department:

Insurance department.

Salaries of clerks, twelve hundred dollars.
Contingent fund, two hundred dollars.

For Inspector of Mines:

Inspector of mines.

Salary of inspector, five hundred dollars.
Contingent expenses, one hundred dollars.

For Judiciary:

Judiciary.

Salaries of supreme judges, superior judges, and common pleas judges, forty thousand dollars.

For Labor Statistics:

Labor statistics.

For salary of commissioner, five hundred dollars.
Traveling expenses, one hundred dollars.
Contingent expenses, one hundred dollars.

For Legislature:

Legislature.

Per diem and mileage of members of the general assembly, their clerks, sergeant-at-arms, and their assistants, and the per diem of employés, under the laws and resolutions of the senate and house, forty thousand dollars.
Contingent expenses, five hundred dollars.

For Supreme Court:

Supreme court.

For deputy clerk, three hundred and seventy-five dollars.
Salary of reporter, four hundred and fifty dollars.
Contingent expenses, twenty-five dollars.

For Supreme Court Commission:

Supreme court commission.

Salaries of commissioners, three thousand seven hundred and fifty dollars.
Messengers and attendants, two hundred and fifty dollars.
Salary of clerk, one hundred and twenty-five dollars.
Salary of assistant clerk, three hundred dollars.

For Secretary of State:

Secretary of state.

Stationery, six thousand dollars.
Distribution of laws, seven hundred dollars.
Contingent expenses, three hundred dollars.
Salaries of clerks, twenty-one hundred dollars.

For Supervisor of Public Printing:

Supervisor of printing..

State binding, five thousand dollars.
State printing, ten thousand dollars.

For State Library:

State library.

Salary of assistant librarian, two hundred and fifty dollars.
Contingent expenses, one hundred dollars.
For books, seven hundred dollars.

For Salaries of State Officers:

Salaries of state officers.

Governor, lieutenant-governor, auditor of state, treasurer of state, secretary of state, commissioner of common schools, superintendent of insurance, attorney-general, clerk of the supreme court, private secretary of the governor, commissioner of railroads and telegraphs, state librarian, law librarian, and supervisor of public printing, six thousand dollars.

For Treasurer of State:

Treasurer of state.

Salaries of clerks, thirteen hundred dollars.
Contingent expenses, one hundred and twenty-five dollars.
Night-watchman, four hundred dollars.

ASYLUM FUND.

SECTION 4. That there be and is hereby appropriated out of any money in the treasury to the credit of the asylum fund, and not otherwise appropriated, the following sums, to wit:

For the Athens Hospital for the Insane:

Athens hospital for the insane.

Current expenses, twenty-five thousand dollars.
Salaries, nine hundred and fifty dollars.

For the Columbus Hospital for the Insane:

Columbus hospital for the insane.

Current expenses, thirty thousand dollars.
Sewerage and water supply (to be expended under the joint direction of the trustees of the Columbus hospital for the insane and the asylum for imbecile youth), two thousand dollars.
Salaries of officers, thirteen hundred dollars.

For the Cleveland Hospital for the Insane:

Cleveland hospital for the insane.

Current expenses, ten thousand dollars.
Ordinary repairs, five hundred dollars.
Fire extinguishers, three hundred dollars.
Salaries of officers, five hundred dollars.

For the Dayton Hospital for the Insane:

Dayton hospital for the insane.

Ordinary repairs, five hundred dollars.

For the Lucas County Insane Asylum:

Lucas county insane asylum.

Maintenance of state insane, five thousand dollars.

For the Asylum for the Blind:

Asylum for the blind.

Current expenses, three thousand dollars.
Salaries, one thousand dollars.
Ordinary repairs, five hundred dollars.

For Asylum for the Deaf and Dumb:

Asylum for the deaf and dumb.

Current expenses, seventeen thousand dollars.
Salaries, five thousand one hundred and fifty dollars.
Ordinary repairs, five hundred dollars.
Fire escapes, fifteen hundred dollars.
Additional school room, one thousand dollars.

For Asylum for Imbecile Youth:

Asylum for imbecile youth.

Salaries, fifteen hundred dollars.
Current expenses, seventeen thousand dollars.
Ordinary repairs, fifteen hundred dollars.
Extending heating apparatus, four thousand dollars.
Gas holder and machinery, three thousand dollars.

For Industrial School for Girls:

Industrial school for girls.

Salaries, twelve hundred dollars.

For Trustees of Benevolent Institutions:

Trustees of benevolent institutions.

The necessary expenses of the trustees of the various benevolent institutions, five hundred dollars.

For Ohio Soldiers' and Sailors' Orphans' Home:

Soldiers' orphans' home.

Current expenses, fifteen thousand dollars.

For Ohio Penitentiary:

Ohio penitentiary.

Salaries, seven thousand dollars.
Manufacturing of gas, two thousand dollars.
Enlargement and repairs, five thousand dollars.

Prosecution and transportation of convicts, twelve thousand dollars.

For Toledo House of Refuge:

Toledo house of refuge.

Support of boys under contract, seven hundred and fifty dollars.

SECTION 5. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed March 5, 1878.

[House Bill No. 108.]

AN ACT

To authorize certain institutions to receive donations, devises, and bequests.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That the board of directors or trustees of any of the benevolent, educational, penal, and reformatory institutions of this state, wholly or in part under the control of the state, shall be capable of receiving, by gift, devise, or bequest, moneys, lands, or other property, for the benefit of any of such institutions, or of any of the inmates of the same, and to hold and apply the same according to the terms and conditions of such gifts, devises, or bequests.

SECTION 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed March 7, 1878.

[House Bill No. 82.]

AN ACT

To authorize the trustees of the mutual protective association of patrons of husbandry to move their office.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That the trustees of any mutual protection association of patrons of husbandry may change the location of their principal office, or place of business, to any other place in the state: provided, however, that before making such

change, a copy of the order of the trustees of the association directing the change of location, duly certified by the chief officers, under the seal of the association, shall be filed with the secretary of state.

Copy of order changing location of office to be filed with secretary of state.

SECTION 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed March 7, 1878.

[House Bill No. 151.]

AN ACT

To amend section six of the act entitled "an act to amend an act to exempt the homestead of families from forced sale on execution to pay debts," passed March 23, 1850, passed April 9, 1869. (66 O. L., 48.)

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That section six of the above recited act be amended so as to read as follows:

Procedure when homestead is set off.

Section 6. When the homestead of any debtor in execution shall consist of a house and a lot of land, which, in the opinion of the appraisers, will not bear division without manifest injury and inconvenience, the plaintiff in execution shall receive, in lieu of the proceeds of a sale of the homestead, the amount over and above one hundred dollars, annually, which shall be adjudged by the appraisers heretofore mentioned, as a fair and reasonable rent for the same, until the debt, costs, and interest are paid. The said rent, over and above one hundred dollars, shall be payable in quarterly payments, commencing three months from the time of the levy of the execution, and the said rent may be paid to the plaintiff in execution or to his assigns, or to the clerk of the court of common pleas of the county in which the said homestead is situated, and the said clerk shall give to the person paying the same a proper receipt, and enter the same on the execution docket without charge; and in case said rent is not paid quarterly, as above provided for, or within ten days after each and every payment shall become due, then, and in that case, it shall be the duty of the officer to proceed and sell said homestead, in the same manner as is provided in other cases for the sale of real estate: provided, such homestead shall not be sold for less than its appraised value; and provided, further, that the plaintiff in execution, the judgment debtor, or any other person or persons to whom, under any law of this state, such homestead may have been set off, may cause the said homestead to be reappraised once in two years, in the same manner as provided

for in section two of this act; and the said rent shall, after such reappraisement, be paid in accordance with said reappraisement; and if such reappraisement shall be made at the instance of the plaintiff in execution, and such appraisement shall not be increased one hundred dollars over the amount of the next previous appraisement, the costs thereof shall be paid by the plaintiff in execution, and in all other cases the costs of the reappraisement shall be taxed as costs in the original case.

Repeal.

SECTION 2. Section six of said above recited act is hereby repealed.

SECTION 3. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed March 7, 1878.

[House Bill No. 276.]

AN ACT

To reënact section three of an act defining the jurisdiction and regulating the practice of probate courts, passed March 14, 1853, and amended April 9, 1863. (S. & S., page 626.)

Probate courts shall have concurrent jurisdiction in what cases.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That said section three of said act of March 14, 1853, read as follows:

Section 3. Probate courts shall have concurrent jurisdiction:

First—In the sale of lands on petition by executors, administrators, and guardians, and the assignment of dower in such cases of sale.

Second—In the completion of real contracts on petition of executors and administrators.

Third—In allowing and issuing writs of habeas corpus, and determining the validity of the caption, and detention of the persons brought before them on such writs of habeas corpus.

SECTION 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed March 7, 1878.

[House Bill No. 37.]

AN ACT

To punish the offense of advertising for procurement of divorces.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That whoever advertises, prints, publishes, distributes, or circulates, or causes to be advertised, printed, published, distributed, or circulated, any circular, pamphlet, card, handbill, advertisement, printed paper, book, newspaper, or notice of any kind with intent to procure, or to aid in procuring any divorce, either in this state or elsewhere, shall on conviction thereof, before any court of competent jurisdiction, be fined in any sum not more than five hundred, nor less than twenty-five dollars, or imprisoned not more than six months, or both; nothing in this act shall be construed to apply to the printing or publishing of any notice of any kind or advertisement required or authorized by any statute of the state of Ohio.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed March 13, 1878.

[House Bill No. 162.]

AN ACT

To amend section three of the act of April 6, 1870, entitled "an act limiting the compensation of certain officers therein named." (Vol. 67, p. 36. O. L.)

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That section three of the above entitled act be so amended as to read as follows:

SECTION 3. The judges of the court of common pleas, in joint session, shall, from time to time, fix the maximum compensation of deputies, clerks, book-keepers, and other assistants who may be employed by the treasurer, auditor, recorder, sheriff, probate judge, and clerk of the court of common pleas, which compensation shall be paid to them monthly out of the county treasury, upon the warrant of the county auditor. The officers above named, shall appoint their deputies, clerks, book-keepers and other assistants, and fix their compensation, but such compensation shall not exceed the maximum amount as fixed by the judges in joint session, as above provided. No officer shall receive or be paid, directly or indirectly, any part of the salary or compensation of such deputy, clerk, book-keeper or other assistant, or any fee or reward for appointing him to such position; nor shall any such deputy, clerk, book-keeper or other assistant receive, for any

Compensation of deputies, etc., to be fixed by court of common pleas.

No additional compensation allowed.

official act or duty, any additional fee, salary or compensation, other than the compensation fixed as herein provided. The county commisioners shall allow and order to be paid, as other claims against the county, all other reasonable expenses necessary to the proper discharge of the duties of any of the above named officers: provided, however, that the compensation of all deputies, clerks, book keepers, and assistants, hereby authorized to be paid, shall be first paid out of the fees, costs, percentages, penalties, or allowances collected by said officer and accounted for and paid into the county treasury.

SECTION 2. That section three of the act of April 6, 1870, entitled "an act limiting the compensation of certain officers therein named," be and the same is hereby repealed.

SECTION 3. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed March 14, 1878.

[House Bill No 242.]

AN ACT

To authorize township trustees of any township in this state to levy a tax for purchasing a hearse and erecting a vault.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the township trustees of any township in this state, be and they are hereby authorized to levy a tax in amount, as shall be by them determined, to purchase a hearse and build a vault, or for either of said purposes, for the use of said township, to be under the control of the trustees thereof, or some person appointed by them: provided, the question of levying such tax, for either or both of said purposes, and the amount asked therefor, shall be separately submitted to the qualified electors of the township at some general election, twenty days' notice thereof having been previously given by posting in at least three public places in said township, the notice shall state specifically the amount to be raised, and for what purpose, either for purchase of hearse, or erection of vault, and if a majority of all the votes cast at such election, shall be in favor of either, or both of said propositions, the same shall be considered adopted, and the tax herein provided for authorized.

SECTION 2. The electors voting at said election shall have placed on their ballots the names, "tax for hearse, yes;" or "tax for hearse, no," and upon the same ballot, "tax for vault, yes;" or "tax for vault, no," and may vote for one proposition and against the other, or for or against both.

SECTION 3. This act shall take effect and be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Sena e.

Passed March 14, 1878.

[Substitute for House Bill No. 207.]

AN ACT

To amend sections eight and nine, of chapter 3, title 2, code of criminal procedure. (O. L., vol. 74, p. 330 and 331.)

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That said section eight be so amended as to read as follows:

Section 8. The court of common pleas or district court may, whenever it is of the opinion that the public interest requires it, appoint an attorney to assist the prosecuting attorney in the trial of any case pending in such court, and the county commissioners shall pay such assistant such compensation for his services as the court approves, and to them seems just and proper

Common pleas court or district court may appoint attorney to assist prosecuting attorney and allow compensation.

SECTION 2. That said section nine be so amended as to read as follows:

Section 9. In counties containing a population greater than one hundred thousand, the judges of the court of common pleas may appoint an assistant prosecuting attorney, at a yearly salary, not exceeding fifteen hundred dollars, to be fixed by the judges making such appointment, and said judges of the court of common pleas may, from time to time, appoint such special assistants, to aid the prosecuting attorney as in their opinion the public business may require, which special assistants shall be paid out of the treasury of the county, on the warrant of the county auditor, such sum as the court may approve and order.

In certain counties may appoint assistant prosecuting attorney at a yearly salary, to be fixed by judges.

Special assistants.

SECTION 3. That said sections eight and nine be and they are hereby repealed, and this act shall take effect and be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed March 14, 1878.

[House Bill No 79.]

AN ACT

To amend section twenty-two of an act entitled "an act for the incorporation of townships," passed March 14, 1853. (S. & C., vol. 2, page 1569.)

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That section twenty-two of the above recited act be amended to read as follows:

Compensation of township trustees and clerks.

Section 22. That each trustee and clerk shall be entitled to receive one and one-half dollars for every day he or they may be necessarily employed in the discharge of their respective duties as such officers, but in no township shall the compensation of each trustee and clerk exceed one hundred and fifty dollars per annum, including services rendered under the poor act, passed February 23, 1877, and the trustees shall allow the constable a reasonable compensation for advertising the time of holding township elections, and notifying the several township officers of their election, to be paid out of the township treasury, on the order of the trustees, attested by the clerk.

Of constables for advertising township elections.

SECTION 2. That original section twenty-two be and the same is hereby repealed.

SECTION 3. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed March 15, 1878.

[House Bill No. 21.]

AN ACT

To amend section two of an act entitled "an act for the better security of head contractors and material men," and to repeal certain acts therein named. (O. L., vol. 74, page 168)

To obtain lien must file, within four months, with recorder of county affidavit containing itemized account of labor, materials furnished, etc., or copy of written contract to be recorded, and lien to operate from what time.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That section two of the above entitled act be so amended as to read as follows:

Section 2. That such person, in order to obtain such lien, shall file, within four months from the time of performing such labor, or furnishing such machinery or materials, with the recorder of the county where said labor was performed, or machinery or materials were furnished, an affidavit containing an itemized account of the amount and value of such labor, machinery, or materials, with all credits and offsets thereon, a copy of said contract, if it be in writing, and if it be not in writing, a statement of the amounts and

times of payment to be made thereunder, and a description of the land on which said house, mill, manufactory, or other building, or appurtenance, fixture, bridge, or other structure shall stand, or be removed to, and the same shall be recorded in a separate book to be kept therefor, and shall operate as a lien from the date of the first item of said labor performed, or said machinery and materials furnished upon or towards the property designated in the first section of this act, and the interest of the owner in the lot or land on which the same shall stand or be removed to, for two years from and after the date of filing said attested account, and in case an action is brought to enforce said lien within that time, the same shall continue in force until the final adjudication thereof, and there shall be no homestead or other exemption as against any lien under the provisions of this act.

In case action is brought to enforce lien, to remain in force until final adjudication.

SECTION 2. That section two of an act entitled "an act for the better security of head contractors and material men, and to repeal certain acts therein named," passed May 4, 1877, be and the same is hereby repealed.

SECTION 3. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed March 13, 1878.

[House Bill No. 35.]

AN ACT

To amend an act entitled "an act to amend section one of an act entitled an act for the establishment, support, and regulation of children's homes in the several counties, and children's district homes, in this state, and to repeal certain acts therein named," passed and took effect March 22, 1876 (O. L., vol. 73, page 64), as amended February 8, 1877. (O. L., vol. 74, page 14.)

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That section one of the above recited act be amended so as to read as follows:

County commissioners to submit question of children's home, etc., to qualified electors of counties.

Section 1. That the county commissioners of any county in this state may, and they are hereby authorized, when in their opinion the interests of the public demand it, to submit the question of establishing a children's home, and the issue of county bonds or notes to provide funds for the purchase of a site, and the erection thereon of said home, to the qualified electors of such county, or to the qualified electors of counties forming such district, at the next regular election, to be held at the usual place of holding elections, for

Notice of election.

ratification or approval, notice of said election to be published at least four weeks in two or more newspapers printed and of general circulation in said county, or in the counties of said district, prior to taking such vote, together with the maximum amount of money proposed to be expended in establishing said home, and if a majority of electors voting at such general election in such county, or in the counties of such district, shall be in favor of establishing said home,

Commissioners of two or more adjoining counties, having voted in favor of home, shall proceed to purchase site, etc.

then the commissioners of said county, or the commissioners of any two or more adjoining counties in such district, having so voted in favor thereof, shall proceed to carry out the intent and purposes of this act, and shall provide for the purchase of a suitable site, and erection of the necessary buildings, to be styled "the children's home" for such county, or "children's home" for such district, and to provide means by taxation for such purchase and support of the same, and they are authorized to receive and hold in trust for the use and benefit of said "home," any grant or devise of land, and any donation or bequest of money or other personal property that may be made for the establishment or support of said home. The commissioners of any county, for the purpose of carrying out the provisions of this act, are authorized to issue the notes or bonds of said county in anticipation of the collection of the taxes levied, or to be levied, for the purchase of a suitable site and erection of the necessary buildings, or for the purchase of a suitable site and buildings already erected thereon, as contemplated in this act, said notes or bonds to bear interest at the rate not to exceed seven per cent. per annum, interest payable semi-annually, and said notes or bonds shall not be sold for less than their par value. That all elections held under said original act shall confer authority under this amended act.

Authorized to receive bequest of money or devise of land.

May issue notes or bonds of county in anticipation of taxes, etc.

SECTION 2. That original section one of the above recited act, as amended, be and the same is hereby repealed, and this act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed March 15, 1878.

[House Bill No. 85.]

AN ACT

To regulate the payment of certain costs in criminal cases.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That in all felonies where the defendant is convicted,

the costs of the justice of the peace, police judge, or justice, mayor, marshal, constable and witnesses, shall be paid out of the county treasury and inserted in the judgment of conviction, so that, except in capital cases, the same may be paid to the county out of the state treasury.

In felonies, if defendant convicted, costs of justice, etc., to be paid out of county treasury.

SECTION 2. In no other case whatever shall any cost be paid out of the state or county treasury to any justice of the peace, police judge, or justice, mayor, marshal, or constable.

SECTION 3. In felonies the fees of witnesses before justices of the peace, mayors, and police justices shall be paid upon the allowance of the commissioners out of the county treasury, on the certificate of such officer, notwithstanding the state may have failed.

Fees of witnesses before justices in cases of felony; how paid.

SECTION 4. The county commissioners may at any regular session make an allowance to any of said officers in lieu of fees in cases of felonies, wherein the state fails, and in misdemeanors wherein the defendant proves insolvent, but the aggregate amount of such allowances to any officer in any year shall not exceed the fees legally taxed to him in such cases, nor shall the aggregate amount allowed to any officer in any year exceed one hundred dollars.

County commissioners may make allowance in cases where state fails.

SECTION 5. That the county commissioners may allow and pay any necessary expense incurred by any officer in the pursuit of any person charged with a felony who shall have fled the country, in addition to the allowance provided for in section four of this act.

County commissioners may pay necessary expense of pursuing felon.

SECTION 6. That in ascertaining the amount of fees taxed, by any justice of the peace, mayor, or police judge, or justice, with a view to making him the allowance hereinbefore mentioned, it must be made to appear in cases where such officer was authorized to take security for costs, that he has exercised reasonable care in taking such security, and until satisfied by the certificate of such justice of the peace, police judge, or justice, or mayor before whom such cases were heard, or other proof to the satisfaction of said commissioners, that the prosecuting witness was indigent, and entirely unable to pay the costs or procure security for the payment of the same, and that the officer exercised due care in taking such security. The officer's fees in such cases shall not be included in ascertaining the amount so to be allowed.

How allowance made.

Must appear that officer exercised reasonable care in taking security for costs.

SECTION 7. That in any case where such officer aforesaid shall take security for costs that is insufficient at the time of taking the same, then in such case the commissioners shall not take into account his fees in such case in making any allowance therein to him.

Where security for costs is insufficient.

SECTION 8. In all cases in which a justice of the peace shall have power to fine any person charged with the commission of an offense, it shall be lawful for every such justice to render judgment for such fine, and to tax such costs, for himself, the constable and witnesses, as are allowed by law.

Lawful for justice to tax costs where he has power to fine.

SECTION 9. That all fees due any of the aforesaid officers,

Certain fees to be paid into county treasury.

in any misdemeanor, shall be paid into the county treasury, unless it shall be ascertained that the amount of such fees was not taken into account in estimating the amount to be allowed to such officer, as aforesaid.

Repealing clause.

SECTION 10. That the following acts are hereby repealed:

1. The act of March 4, 1864, (S. & S. 369), entitled "an act to amend an act entitled 'an act to amend section one of an act entitled an act regulating the payment of costs in prosecutions for minor offenses,' passed April 16, 1862, and also to amend an act entitled 'an act defining the powers and duties of justices of the peace, and constables, in criminal cases,' passed March 27, 1837."

2. The act of March 29, 1867, (S. & S. 369), entitled "an act to amend section two of an act entitled 'an act defining the powers and duties of justices of the peace, and constables, in criminal cases,' as amended February 13, 1866."

SECTION 11. This act shall take effect from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed March 16, 1878.

[Senate Bill No. 74.]

AN ACT

To amend sections five and six of "an act entitled an act relating to roads and highways," passed March 9, 1868. (Vol. 65, page 16, Laws of Ohio.)

Duty of supervisor to order out residents to work on the public roads.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That section five (5) of the above recited act be so amended as to read as follows:

Section 5. That it shall be the duty of every supervisor to order out every such person resident as aforesaid, between the first day of April and the first day of July, annually, and direct to do and to perform the work aforesaid on the public roads within his district; and if any such resident, being personally warned by such supervisor, or by leaving a written notice at his usual place of abode, shall refuse or neglect, having had at least two days' notice, to attend by himself or substitute to the acceptance of the supervisor, or having attended, shall refuse to obey the directions of the supervisor, or shall spend the time in idleness or inattention to the duties assigned him; every such delinquent shall forfeit and pay the sum of one dollar for every such offense, and shall further be liable in all cases of non-attendance to the amount allowed for two days work, to be recovered by action before any justice of the peace of the proper township,

Penalties, what, and how recovered.

at the suit of the supervisor within whose district he may reside; and the money so collected shall be applied by said supervisor to the improvement of the road in his district, and accounted for by him at the annual settlement with the trustees of his township: provided, that no person shall be released from performance of labor on the public highway by reason of the neglect of any supervisor to order out such person on or before the first day of July; provided, further, that if the trustees of any township, or any two of them, shall, within three days after the election and qualification of any supervisor within their township, direct him in writing to defer any portion of the work within a date not later than the first of November, then the supervisor shall be governed by the directions so given as to the time the labor shall be performed.

No person to be released from labor on roads by neglect of supervisor to order out.

Section 6. That in case any person shall remove from one district to another between the first day of April and the first day of November, who has, prior to such removal, performed the whole or any part of the labor aforesaid, or in any other way has paid the whole or any part of the amount aforesaid in lieu of such labor, and shall produce a certificate of the same from the supervisor of the proper district, such certificate shall be a complete discharge for the amount therein specified; but without producing such certificate, he shall be required to perform two days labor, or such part thereof as he has not performed, under the directions of the supervisor, as provided for in section six (6) of the above recited act as herein amended.

Person removing from one district to another shall produce certificate of having performed labor, etc.

SECTION 2. That section five (5) and section six (6) of said act so amended be and the same is hereby repealed.

SECTION 3. This act shall take effect from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed March 18, 1878.

[House Bill No. 12.]

AN ACT

To amend sections eighteen, nineteen and twenty of an act for the reorganization and maintenance of common schools. (O. L., vol. 70, 1873, pages 198 and 199), passed May 1, 1873.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That sections eighteen, nineteen, and twenty of the above recited act be amended so as to read as follows:

Section 18. At every annual election of city officers in each city constituted a city district of the second class by the

Members of board of education in city district of second class, how elected.

act to which this is amendatory, there shall be elected in said city district, at the usual places of holding elections therein, for city and township officers, and before the same judges and clerks, by the qualified electors thereof, two judicious and competent persons, to serve as members of the board of education, for the term of three years, from the third Monday of April succeeding their election, and until their successors are elected and qualified. The names of candidates for said board of education shall be placed on a separate ticket, and voted in separate ballot boxes, to be provided by the boards of education in said districts, and returns of said election shall be made to the city clerk of said city: provided, that where any portion of said district is outside the city limits, the names of candidates for board of education shall be placed on a separate ticket, and voted in separate ballot boxes, to be provided by the boards of education in said district, at the usual places of holding elections for township officers, and before the same judges and clerks, and returns thereof shall be made to the city clerk of the city constituting said district, and on the first Monday in April, annually, there shall be held between the hours of six o'clock A.M. and six o'clock P.M., at the usual places of holding school meetings in each village district, a meeting of the qualified electors resident within the limits of the district who, when assembled, shall organize by the appointment of a chairman and secretary, and shall then choose, by ballot, two competent and judicious persons to serve as members of the board of education for the term of three years from the third Monday of April succeeding their election, and until their successors are elected and qualified: provided, that in case the board of education consists of three members, one person shall be elected to serve as aforesaid: provided, that in case the board of education of a city or a city district of the second-class decide that said board of education shall consist of as many members as the city has wards, there shall be elected biennially in each ward, as provided in the eleventh, twelfth and thirteenth sections of this act, one competent and judicious person to serve as a member of the board of education for the term of two years from the second Monday succeeding his election, and until his successor is elected and qualified: provided, further, that at the first election under this act, one person shall be elected for each ward, designated by odd number, who shall serve for one year or until his successor is elected and qualified.

Proviso.

Notice of meeting or election.

Section 19. The clerk of the board of education of each city district of the second class, and village district, shall publish a notice of the election and meeting provided in the preceding section, in a newspaper of general circulation in the district, or post written notices of such meeting in five of the most public places in the district, at least ten days before the holding of the same, in which notices of the time

and place of the election or meeting, and the number of members to be elected, shall be specified.

Secretary or clerk to keep poll-book, etc.

Section 20. The secretary of the meeting, or clerks of the election of village districts provided for in section eighteen of this act, shall keep a poll book and tally sheet, and return within five days after the election to the clerk of the board of education of the district, said poll book and tally sheet, duly certified.

Section 2. That said sections eighteen, nineteen and twenty, be and they are hereby repealed.

Section 3. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed March 18, 1878.

[House Bill No. 89.]

AN ACT

To authorize incorporated villages and cities to purchase steam fire engines and fire apparatus.

City or incorporated village may purchase steam fire engine, etc., and issue bonds in anticipation of tax.

Section 1. *Be it enacted by the General Assembly of the State of Ohio*, That any incorporated village, containing a population of not less than two thousand, or city not now provided with sufficient apparatus for protection against fire, be and is hereby authorized and empowered to purchase, through the council of such village or city, a steam or hand fire engine, or other fire apparatus; and the council is hereby authorized to issue bonds in anticipation of a tax to be levied therefor, not exceeding five thousand dollars; said bonds to be issued in such amounts and payable at such times as said council may deem proper, and providing such bonds shall bear interest at a rate not exceeding seven per cent., payable semi-annually: provided, however, that said bonds shall not be sold for less than par value, and provided, further, that no money shall be borrowed on said bonds until after the question of borrowing said money, and issuing said bonds, shall be submitted to a vote of the qualified electors of said city or village at a regular election thereof, and that a majority of two-thirds voting thereat shall vote in favor of issuing said bonds.

Bonds not to be sold for less than par.

No money to be borrowed until question of issuing bonds is submitted to a vote.

Notice.

Section 2. That if a majority of the council of such incorporated village or city shall pass a resolution to submit such question to the people, notice thereof shall be given in some newspaper of general circulation therein, at least ten days prior to such election, and those voting therefor shall have written or printed on their ballots the words, "For fire

Ballots.

bonds, yes," and those voting against, the words, "For fire bonds, no."

SECTION 3. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed March 20, 1878.

[House Bill No. 272.]

AN ACT

To amend an act entitled an act supplementary to an act entitled "an act supplementary to an act to provide for the organization and government of municipal corporations," passed May 5, 1877. (Ohio Laws, volume 74, page 185.)

Board of aldermen in certain cities of the first class, how elected.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That in all cities of the first class, having a population of over two hundred thousand inhabitants, the board of aldermen shall consist of thirty members, to be elected by districts, by the qualified electors thereof, to serve for the term of four years, except that at the first municipal election held in such city after the passage of this act, the members from the even numbered districts shall be elected for two years only. That for the purpose of electing said aldermen, all said cities shall be and they are hereby divided into districts, as follows:

City how divided into districts.

The first, second, third, fourth, and seventh wards shall constitute the first district.

The fifth, sixth, eighth, ninth, and tenth wards shall constitute the second district.

The eleventh, twelfth, twenty-third, twenty-fourth, and twenty-fifth wards shall constitute the third district.

The thirteenth, fourteenth, fifteenth, sixteenth, and twenty-second wards shall constitute the fourth district. and,

The seventeenth, eighteenth, nineteenth, twentieth, and twenty-first wards shall constitute the fifth district.

Number of alderman elected in a district.

That the electors of each of said districts as aforesaid shall elect six (6) members of said board of aldermen, and when said members are elected and qualified, the terms of office of all the members of any board of aldermen now existing in any such city, affected by this act, shall cease and determine.

Aldermen, with board of council, to form common council.

That said board of aldermen and the board of council now provided by and existing under the act to provide for the organization of municipal corporations, passed May 7, 1869, shall together form the common council of such city. The usual notice of such election is hereby dispensed with, and it shall only be necessary for the mayor of such city to issue

his proclamation on any day after the passage of this act, and before the day of election.

Repealing clause.

SECTION 2. That an act entitled an act supplementary to an act entitled "an act supplementary to an act to provide for the organization and government of municipal corporations," passed February 10, 1870, passed May 5, 1877, (O. L., volume 74, page 185), be and the same is hereby repealed, and all laws inconsistent herewith are hereby declared to be inoperative in cities affected by this act.

SECTION 3. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed March 21, 1878.

[Senate Bill No. 10.]

AN ACT

To amend section eleven (11) of chapter eight (8) to amend, revise, and consolidate the statutes relating to crimes and offenses, and to repeal certain acts therein named, to be known as title one, crimes and offenses, part four, of the act to repeal and consolidate the general statutes of Ohio, passed May 5, 1877. (Volume 74, O. L., page 268.)

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That section eleven of chapter eight of the act to revise, amend and consolidate the statutes relating to crimes and offenses, passed May 5, 1877, be so amended as to read as follows:

Betting on election, how punished.

Section 11. That whosoever makes any bet or wager, sells or purchases any pools, on the result of any election held under the laws of this state, or upon the election of any person to any office, post, or situation, which by the constitution or laws of this state is made elective, or upon the election of president or vice-president of the United States, or of any elector of president or vice-president of the United States, shall be fined not more than five hundred nor less than five dollars, or be imprisoned in the jail of the county not less than ten days, or more than six months, at the discretion of the court, and whenever the amount put at hazard is between said sums, the fine shall equal the amount so hazarded. Prosecutions under this section shall be commenced within one year from the time the offense is committed.

Penalty.

Prosecutions to be begun within one year.

SECTION 2. Provided, that the state may require any person to testify as to any violation of this act, and such person so having been called shall not be liable to trial for any offense concerning which [he] has been called.

SECTION 3. That said section eleven (11) of chapter eight

(8) be and the same is hereby repealed, and this act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed March 21, 1878.

[House Bill No. 335.]

AN ACT

To amend sections eleven and twelve of an act entitled "an act supplementary and amendatory of the act entitled an act to mend sections two, four, and twenty-four of an act to preserve the purity of elections," passed May 7, 1877, (O. L., vol. 74, page 211.)

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That sections eleven and twelve of the above named act be so amended as to read as follows:

Election districts in certain cities, how constituted.

Section 11. In every city of fifteen thousand or more inhabitants, and not exceeding two hundred thousand inhabitants at the preceding census, having any ward in which more than six hundred ballots are cast at any election, the council thereof shall, immediately after the taking effect of this act, and whenever occasion may arise, divide, by ordinance, every such ward into subdivisions of compact territory, for election purposes only, bounded by streets or alleys, or both, so that each subdivision shall contain, as nearly as practicable, three hundred electors resident therein, and shall designate in such ordinance, as wards, such subdivisions by letters of the alphabet in their order, with the number of such municipal ward added, as, for illustration: ward A, 1; ward B, 1; ward C, 1; ward A, 2; ward B, 2, and so on. If the council of any such city shall fail, for sixty days, to divide such ward so divisible for election purposes under this act, the mayor of such city shall thereupon divide the same in accordance herewith, and give notice thereof by proclamation, containing the boundaries and designation of every subdivision, and the places of holding elections therein, which proclamation shall be published forthwith, in some newspaper published and of general circulation in such city, and shall be recorded in the ordinance record thereof.

Wards, how divided to form election districts in certain city (Cincinnati.)

In every city of two hundred thousand or more inhabitants, and in every city of ninety thousand and less than two hundred thousand, at the preceding census, where the votes of any ward of a city exceeding eight hundred, the common council may divide said ward or wards into two or more voting districts, on or before the 25th day of March, A.D. 1878; and upon the failure or neglect of said council to so divide said wards into voting districts within the time

herein prescribed, the mayor of such city shall perform the duties herein imposed upon common councils: provided, however, that nothing herein contained shall prevent the common council of any such city, and it is hereby expressly empowered, to divide any ward into as many voting districts as it may deem proper, and the vote of said district shall be returned as the vote of the ward.

Elections, how held in such divided wards.

Section 12. In every municipal ward so subdivided, all elections shall be held by and in the subdivisions thereof; and the judges of election for such municipal ward, as now provided by law, shall be judges of election for ward A, thereto, and such judges shall meet at the mayor's office on the last Friday in March of each year, at 10 o'clock A.M., and shall there select and appoint two judges of election, of opposite politics, for each of the other subdivisions or wards of such municipal ward, and the electors of the ward so subdivided shall select a third man to serve as judge of such subdivision upon the organization; the persons so appointed shall be electors and residents for at least sixty days in the ward for which appointed; the mayor shall forthwith cause notice to be given to each person so appointed, and shall cause a record to be made and kept in his office of such appointments. The persons so appointed shall act as judges of election in their proper subdivisions or wards during the period of one year; they shall take the same oath of office, be subject to the same requirements, penalties, liabilities and disqualifications, and entitled to the same compensation as other judges of election. They shall designate and appoint two clerks of election, of opposite politics, who shall take an oath of office, and shall perform all the duties, and be subject to all the liabilities as other clerks of elections; if any such judges or clerks shall fail to attend, at the proper time and place, such judges and clerks, and all additional judges and clerks, shall be chosen and qualified as now provided by law.

Judges of election, how appointed.

Mayor to give notice to judges.

Clerks of election, how appointed.

SECTION 2. Original sections eleven and twelve of the act of which this is amendatory are hereby repealed.

SECTION 3. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed March 22, 1878.

[Senate Bill No. 18.]

AN ACT

To reorganize the reform school for boys.

Be it enacted by the General Assembly of the State of Ohio,

SECTION
1. Commissioners, their appointment, term, and bonds.
2. The commissioners, their duties; board to appoint officers, and fix salaries.
3. Compensation of commissioners.
4. Meetings and duties of the board; a quorum.
5. Board to establish rules.
6. Board may require bonds from subordinates
7. Object of the school, and term for which youth to be committed thereto.
8. Who may be committed thereto, and for what.
9. Also convict youth may be committed.
10. Also youth charged before a grand jury, on their recommendation.

SECTION
11. Cause of commitment to appear in papers.
12. Inmates may be apprenticed.
13. Fugitives from the school may be arrested and returned.
14. Costs and expenses to be paid by county.
15. What education and training inmates to receive.
16. Governor may remove youth from the penitentiary or house of refuge to the school.
17. Subordinates and employés to participate with the inmates in labor and exercises.
18. Board may purchase material and sell products.
19. The lands of the school a special road district, of which the acting commissioner shall be supervisor.
20. Annual report of the board.

Commissioners of reform school, how appointed; their term, oath and bond, etc.

SECTION 1. The reform school, situate in Fairfield county, shall be under the control and management of a board of five commissioners, who shall, immediately after the passage of this act, be appointed by the governor, by and with the advice and consent of the senate, and hold their office respectively for the term of one, two, three, four, and five years, in the order of their appointment, and on the first day of March, annually, therea ter, the governor shall appoint one commissioner for the term of five years, and fill all vacancies that may occur; and before entering upon the discharge of their duties they shall severally give bond to the state in such amounts and with such sureties as shall be approved by the governor; which bonds, with their official oaths indorsed thereon, shall be deposited with the treasurer of state. [63 v. 52, sec. 6; S. & S., 723.]

Their duties.

SECTION 2. It shall be the first duty of the commissioners after taking the oath of office, to meet at the reform school and organize themselves into a board, by the election of one of their number as president. They shall elect a secretary who shall keep a journal of their proceedings for public inspection. It shall also be his duty to serve as bookkeeper of the institution, and make a faithful entry of all the financial transactions of the school, expenditures of money, etc. He shall reside at the school, and be paid a yearly salary to be fixed by the board. He shall be subject

to removal at the pleasure of the board. The board shall appoint a superintendent, who shall hold his office for three years, unless sooner removed by them for cause, and he shall appoint by and with the advice and consent of the board such other officers as in the judgment of the board the wants of the institution may require, and the board shall prescribe the duties of said officers, remove them at pleasure, and determine their salaries respectively. The superintendent shall exercise general supervision over the institution. A majority of said board shall constitute a quorum.

Commissioners to appoint superintendent.

SECTION 3. The superintendent shall receive such salary as may be fixed by law, and no other fees, perquisites, or personal expenses. but he shall be entitled to occupy suitable apartments, and to have board for himself and family in the institution. The commissioners shall be allowed five dollars per diem for the time actually employed in the business of the institution, for traveling and other expenses, but shall receive no other fees whatever, and this per diem shall not be for more than forty days in any one year. [63 v. 52, sec. 6; S. & S., 723.]

Compensation of superintendent.

Compensation of commissioners.

SECTION 4. The board shall meet at least as often as once each month, and at such meetings shall examine carefully into the condition of the institution and its administration, inspect all vouchers for and accounts of all expenditures, and all items of receipts, either from appropriations or other sources, and balance and certify the books to the dates of such meetings. [63 v. 52, sec. 6; S. & S., 723: 55 v. 27, sec. 7; S. & C., 1380.]

Meetings and duties of board.

SECTION 5. The board shall have the power to establish all needful rules and regulations for the admission and discharge of inmates, and for the management of the institution, and the instruction, improvement, discipline, and correction of the inmates, and to amend and alter such rules and regulations. [55 v. 27, sec. 7; S. & C., 1380.]

Board to make rules and regulations.

SECTION 6. The board may require of any subordinate officer or employé a bond to the state in such sum, with such conditions and with such sureties, as may be approved by the board. [55 v. 27, sec. 7; S. & C., 1380.]

May require bond of subordinate officer.

SECTION 7. The reform school shall have for its object the reformation of those committed to its charge, and all youth committed thereto shall be committed until they arrive at full age, unless sooner reformed. [55 v. 27, sec. 1; S. & C., 1380; 54 v. 163, sec. 15; S. & C., 687.]

SECTION 8. Male youth, not over sixteen nor under ten years of age, may be committed to the reform school by any judge of a police, or judge of the court of common pleas, or the probate court, when, on complaint and proof by the parent, guardian, or next friends of any such youth, supported by the sworn statement of two respectable witnesses, it is shown that he, by reason of his incorrigible or criminal conduct, is beyond the control of such parent, guardian, or next friend, and that, from regard to his future welfare and the

Who may be admitted to school, and how admitted.

protection of society, he should be placed under restraint. [54 v. 163, sec. 6; S. & C. 687.]

Youth convicted of crime may be committed to reform school.

SECTION 9. Any such youth convicted of any crime or offense, the punishment of which is, in whole or in part, confinement to the jail or penitentiary, may, at the discretion of the court giving sentence, in lieu of being sent to the jail or penitentiary, be committed to the reform school. [54 v. 163, sec. 7; S. & C, 687.]

May be committed on recommendation of grand jury before indictment.

SECTION 10. Any such youth against whom a crime is charged before any grand jury, if the charge is supported by sufficient evidence to put him on trial, may, on the recommendation of the grand jury, and without presenting an indictment, be committed by the court to the reform school. [54 v. 163, sec. 8; S. & C, 687.]

Cause of commitment to be set forth in papers presented with youth.

SECTION 11. No such youth shall be received into the reform school unless the cause of commitment is set forth in papers presented with such youth; and the board shall also require that the age of such youth and such other information as they shall deem important, shall likewise be furnished. [54 v. 163, sec. 13; S. & C., 687.]

Board ma apprentice inmates.

SECTION 12. The board, through the superintendent, shall have the same power to apprentice inmates as the directors of houses of refuge have, and in case of such apprenticeship, the indentures shall be filed at the institution, and no other record thereof shall be necessary; and they may, whenever they deem it for any reason for the benefit of such youth so apprenticed, cancel the indentures and reclaim those so apprenticed. [54 v. 163, secs. 15, 16; S. & C. 687.]

Fugitive from reform school may be arrested and returned.

SECTION 13. Any fugitive from the reform school may, on the order of the superintendent or other officer of the institution, be arrested and returned to the school, or any officer or agent thereof, by any sheriff, constable, or police officer, or other person, and may also be arrested and returned by any officer or agent of the school. [54 v. 163, sec. 17; S. & C., 687; 55 v. 27, sec. 12; S. & C. 1380.]

Expenses of sending youth to reform school to be paid by county.

SECTION 14. The costs in any case, and the actual expenses incurred in the transportation of any youth to the reform school, shall be paid by the county from which such youth is committed, to the officer transmitting such youth, upon the presentation of his sworn statement of account, and the certificate thereto of the proper officer of the institution. Any officer charged with the execution of the commitment of any youth, shall retain in his custody the person so ordered to be committed until he is notified by the officers of the reform school that there is room for such youth. [55 v. 27, sec. 13; S. & C., 1380.]

Inmates to receive education.

SECTION 15. The inmates of the reform school shall receive such education, and be instructed in such branches of industry, agricultural or mechanical, or otherwise, as the board may, from time to time, determine, the reformation of such inmates and their preparation for usefulness being kept in view in the administration of the institution; and for

this purpose the board may introduce and carry on any branches of industry that may be thought conducive to these ends. [55 v. 27, sec. 7; S. & C., 1380]

Governor may cause any juvenile offender confined in penitentiary to be sent to reform school.

SECTION 16. The governor may, upon the written application of the superintendent of the reform school, or when it may otherwise be made to appear to the governor that it would be expedient, cause any juvenile offender confined in the penitentiary, or in any house of refuge, to be transferred to the reform school, the expense of such removal to be paid by the state: provided, any person so removed from the penitentiary, or under sentence to the penitentiary, may be by the governor, for satisfactory reasons, remanded to the penitentiary to serve out whatever there may remain of the period covered by the sentence. [55 v. 27, sec. 14; S. & C., 1380; 67 v. 24, sec. 1.]

May be remanded to penitentiary.

SECTION 17. The subordinate officers and employés of the institution shall participate in the manual labor and other exercises of the inmates. [55 v. 27, sec. 7; S. & C. 1380.]

Powers of board in purchase of materials, etc.

SECTION 18. The board shall have power to purchase all needed materials for manufacture, and to sell the products thereof and of the farm; and such proceeds may be used for the purpose of the institution; but detailed reports of all receipts from these or other sources, except appropriations, shall be reported quarterly to the auditor of state. [55 v. 27, sec. 7; S. & C. 1380.]

Reform school made a special road district.

SECTION 19. The reform school, with the lands thereto attached, is hereby declared to be a special road district, and the superintendent is hereby vested with all the powers of a supervisor of roads for said district. He is authorized to alter the public roads of said lands in such manner as shall be found necessary for the general plan and outline of the same: provided, however, that no alteration shall be made by which existing roads shall be greatly lengthened, or their grade materially increased, or their general use to the public materially impaired; and provided, further, that such alterations be approved by the county commissioners of the county of Fairfield. [56 v. 73, sec. 3; S. & C., 1383.]

Board to make report annually to the governor.

SECTION 20. The board shall, annually, make a full report to the governor, giving detailed accounts of the fiscal affairs of the institution, and full statements of its management and condition, with such other information and suggestions as may be deemed appropriate. [55 v. 27, sec. 7; S. & C. 1380.]

Repeals.

SECTION 21. The following acts and parts of acts are hereby repealed:

1. The act of March 27, 1866, entitled "an act to amend section six of an act entitled 'an act to provide for the establishment of reform schools, passed April 2, 1858, as amended in March, 1859.'" [63 v. 52; S. & S. 723.]

2. Sections one, three, five, seven, eight, ten, eleven, twelve, thirteen, fourteen and twenty-two of the act of April

2, 1858, entitled "an act to provide for the establishment of reform schools." [55 v. 27; S. & C., 1380.]

3. Sections one and three of the act of March 26, 1859, entitled "an act to amend and supplementary to an act entitled 'an act to provide for the establishment and government of reform schools, passed April 2, 1858.'" [56 v. 73; S. & C. 1383.]

SECTION 22. This act shall take effect on its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed March 21, 1878.

[Substitute for House Bill No. 69.]

AN ACT

To provide for the regulation and management of asylums for the insane, to constitute chapter seven of title five of part one of the statute to revise the general laws.

Names of asylums for the insane.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the asylums for the insane shall respectively be designated as follows: That near Cleveland, as the Cleveland asylum for the insane, that near Dayton, as the Dayton asylum for the insane, and that near Athens, as the Athens asylum for the insane, and they shall each be under the charge of a separate board of trustees. [73 v. 80, § 1.]

District of the Cleveland asylum.

SEC. 2. The district for the Cleveland asylum shall be composed of the counties of Cuyahoga, Ashtabula, Geauga, Lake, Trumbull, Mahoning, Portage, Summit, Columbiana, Stark, Lorain, Medina, and Wayne.

District of the Columbus asylum.

The district of the Columbus asylum shall be composed of the counties of Williams, Fulton, Defiance, Henry, Lucas, Ottawa, Wood, Sandusky, Erie, Huron, Seneca, Hancock, Wyandot, Crawford, Richland, Ashland, Hardin, Logan, Champaign, Marion, Morrow, Knox, Holmes, Coshocton, Tuscarawas, Carroll, Jefferson, Harrison, Licking, Delaware, Franklin, Fairfield, Pickaway, Fayette, Madison, and Union.

District of the Dayton asylum.

The district of the Dayton asylum shall be composed of the counties of Clark, Allen, Auglaize, Shelby, Putnam, Mercer, Paulding, Van Wert, Miami, Darke, Montgomery, Butler, Preble, Warren, Green, Brown, Clinton, and Clermont.

District of Athens asylum.

The district of the Athens asylums shall be composed of the counties of Guernsey, Muskingum, Belmont, Morgan, Noble, Perry, Monroe, Washington, Athens, Meigs, Gallia, Lawrence, Jackson, Vinton, Hocking, Ross, Pike, Scioto, Highland, and Adams.

Board of trustees, where they shall reside, how appointed, etc.

SECTION 3. The board of trustees for each of said asylums, shall consist of five suitable persons, not more than two of whom shall reside in the county, and others within the district in which the asylum is located. Within a reasonable time after the passage of this act, the governor with the advice and consent of the senate, shall appoint the said boards of trustees—one of each board to serve one year, one to serve two years, one to serve three years, one to serve four years, and one to serve five years, from date of appointment; and at the expiration of their respective terms of service, their successors shall be appointed, in the manner herein provided, for the term of five years, one to be appointed each year. The governor shall have power to fill any vacancies that may occur in any of said boards of trustees, for the unexpired term thereof, and in case the senate is not in session at the time, the trustees so appointed shall proceed to act upon the certificate of the governor, and such nomination shall be submitted to the senate for its approval at the next session. Before entering upon their duties, each of said trustees shall take and subscribe an oath or affirmation to support the constitution of the United States, and of the state of Ohio, and to faithfully and honestly discharge all the duties of said trust, and in all things to protect the interests of the state; which oath shall be filed in the office of the governor. Said trustees shall perform their duties gratuitously: provided, they shall have their actual and necessary expenses paid the time they are actually engaged in the discharge of their official duties, such payment to be made out of the state treasury, upon a warrant of the auditor of state. [73 v. 80, sec. 3.]

Vacancies in board, how filled.

Oath of office.

Compensation, how paid.

Board, how organized.

SECTION 4. The board of trustees shall, at the first regular meeting after their appointment, proceed to the election of a president and secretary of said board from their own number, and after such election, said board shall or as soon thereafter as may be practicable, appoint a steward for each of said asylums, who shall, unless sooner removed, hold his office for the period of two years, from date of appointment, and until his successor is elected and qualified. [73 v. 80, sec. 4.]

Steward, how appointed, term of office, etc.

Bond of steward, duties, etc.

SECTION 5. The steward shall, before entering on his duties, enter into a bond to the state, with at least two good and sufficient sureties, to be approved the probate judge of the county in which the asylum is located, in the sum of ten thousand dollars, conditioned that he will faithfully and honestly perform the duties of his office, and pay over and account for all moneys, and property that shall come into his hands by reason of his said office, belonging to the state or to any other person, which bond shall be recorded in the journal of such asylum, and filed in the office of the governor. [73 v. 80, sec. 5.]

2, 1858, entitled "an act to provide for the establishment of reform schools." [55 v. 27; S. & C., 1380.]

3. Sections one and three of the act of March 26, 1859, entitled "an act to amend and supplementary to an act entitled 'an act to provide for the establishment and government of reform schools, passed April 2, 1858.'" [56 v. 73; S. & C. 1383.]

SECTION 22. This act shall take effect on its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed March 21, 1878.

[Substitute for House Bill No. 69.]

AN ACT

To provide for the regulation and management of asylums for the insane, to constitute chapter seven of title five of part one of the statute to revise the general laws.

Names of asylums for the insane.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That the asylums for the insane shall respectively be designated as follows: That near Cleveland, as the Cleveland asylum for the insane, that near Dayton, as the Dayton asylum for the insane, and that near Athens, as the Athens asylum for the insane, and they shall each be under the charge of a separate board of trustees. [73 v. 80, § 1.]

District of the Cleveland asylum.

SEC. 2. The district for the Cleveland asylum shall be composed of the counties of Cuyahoga, Ashtabula, Geauga, Lake, Trumbull, Mahoning, Portage, Summit, Columbiana, Stark, Lorain, Medina, and Wayne.

District of the Columbus asylum.

The district of the Columbus asylum shall be composed of the counties of Williams, Fulton, Defiance, Henry, Lucas, Ottawa, Wood, Sandusky, Erie, Huron, Seneca, Hancock, Wyandot, Crawford, Richland, Ashland, Hardin, Logan, Champaign, Marion, Morrow, Knox, Holmes, Coshocton, Tuscarawas, Carroll, Jefferson, Harrison, Licking, Delaware, Franklin, Fairfield, Pickaway, Fayette, Madison, and Union.

District of the Dayton asylum.

The district of the Dayton asylum shall be composed of the counties of Clark, Allen, Auglaize, Shelby, Putnam, Mercer, Paulding, Van Wert, Miami, Darke, Montgomery, Butler, Preble, Warren, Green, Brown, Clinton, and Clermont.

District of Athens asylum.

The district of the Athens asylums shall be composed of the counties of Guernsey, Muskingum, Belmont, Morgan, Noble, Perry, Monroe, Washington, Athens, Meigs, Gallia, Lawrence, Jackson, Vinton, Hocking, Ross, Pike, Scioto, Highland, and Adams.

Board of trustees, where they shall reside, how appointed, etc.

SECTION 3. The board of trustees for each of said asylums, shall consist of five suitable persons, not more than two of whom shall reside in the county, and others within the district in which the asylum is located. Within a reasonable time after the passage of this act, the governor with the advice and consent of the senate, shall appoint the said boards of trustees—one of each board to serve one year, one to serve two years, one to serve three years, one to serve four years, and one to serve five years, from date of appointment; and at the expiration of their respective terms of service, their successors shall be appointed, in the manner herein provided, for the term of five years, one to be appointed each year. The governor shall have power to fill any vacancies that may occur in any of said boards of trustees, for the unexpired term thereof, and in case the senate is not in session at the time, the trustees so appointed shall proceed to act upon the certificate of the governor, and such nomination shall be submitted to the senate for its approval at the next session. Before entering upon their duties, each of said trustees shall take and subscribe an oath or affirmation to support the constitution of the United States, and of the state of Ohio, and to faithfully and honestly discharge all the duties of said trust, and in all things to protect the interests of the state; which oath shall be filed in the office of the governor. Said trustees shall perform their duties gratuitously: provided, they shall have their actual and necessary expenses paid the time they are actually engaged in the discharge of their official duties, such payment to be made out of the state treasury, upon a warrant of the auditor of state. [73 v. 80, sec. 3.]

Vacancies in board, how filled.

Oath of office.

Compensation, how paid.

Board, how organized.

SECTION 4. The board of trustees shall, at the first regular meeting after their appointment, proceed to the election of a president and secretary of said board from their own number, and after such election, said board shall or as soon thereafter as may be practicable, appoint a steward for each of said asylums, who shall, unless sooner removed, hold his office for the period of two years, from date of appointment, and until his successor is elected and qualified. [73 v. 80, sec. 4.]

Steward, how appointed, term of office, etc.

Bond of steward, duties, etc.

SECTION 5. The steward shall, before entering on his duties, enter into a bond to the state, with at least two good and sufficient sureties, to be approved the probate judge of the county in which the asylum is located, in the sum of ten thousand dollars, conditioned that he will faithfully and honestly perform the duties of his office, and pay over and account for all moneys, and property that shall come into his hands by reason of his said office, belonging to the state or to any other person, which bond shall be recorded in the journal of such asylum, and filed in the office of the governor. [73 v. 80, sec. 5.]

Medical superintendent and matron, how appointed.

SECTION 6. The board shall appoint a medical superintendent for the asylum, who shall hold his office for five years, unless sooner removed, and the board shall also after consultation with the superintendent, appoint a matron, and such assistant physicians as may be necessary, all of whom, and the steward, shall reside at the institution. [73 v. 80, sec. 6.]

Salaries and wages.

SECTION 7. The board shall fix all salaries and wages not fixed by law, and also establish all needful rules and regulations for the government of the institution. [73 v. 80, sec. 6.]

Who shall take oath of office.

SECTION 8. The superintendent, steward, book-keeper and storekeeper, assistant physicians, and matron, shall take and subscribe an oath or affirmation, similar to that prescribed for the trustees, which oath shall also be filed in the office of the governor. [73 v. 80, secs. 3, 6.]

Trustees to visit institution and examine accounts monthly.

SECTION 9. It shall be the duty of said board of trustees, monthly, to visit their institution, and they shall, with the superintendent, examine the accounts of the steward, book-keeper and storekeeper, and each, and the superintendent, shall certify his approval or otherwise on the duplicate monthly balance sheets, hereinafter provided for. They shall make a record of their proceedings at all meetings in a book to be kept for that purpose by the secretary of the board, and each year they shall make a report to the governor, of the condition and wants of the asylums, and an estimate of the several necessities of the institution for the succeeding year, which shall be accompanied by full and accurate reports, of the medical superintendent, in which shall be given a detailed statement of receipts and expenditures, including names and time of each employé in the asylum during the year, and a summary of all contracts entered into during the year, with the names of all persons interested in such contracts. Special meetings of the board may be held on the call of the president, or any two members: provided, each member shall have at least three days' notice of such meeting, in writing, together with a statement of the object for which the meeting is called. [73 v. 80, secs. 7, 11]

To make annual report to governor.

What report to contain.

Books, how kept, when balanced, etc.

SECTION 10. There shall be kept at each of the asylums herein mentioned, in suitable books prepared for the purpose, a detailed account of all receipts and expenditures of such asylum, which books shall always be open to the inspection of the medical superintendent and trustees, and these books shall be correctly balanced on the fifteenth day of each month, and closed at the end of each fiscal year, corresponding with the fiscal year of the state. There shall be prepared and submitted for the inspection of the medical superintendent and trustees, at the close of each month, on the 15th day thereof, an original and duplicate balance sheet taken from said books, which balance sheets shall show the balance of appropriations in the state treasury, the balance of any donations or bequests of money, the balance of proceeds of

Monthly balance sheet, what to show.

the rent or sale of any grant or devise of lands or personal property, to be applied to the maintenance of insane persons, or to the general use of the asylum or from any source whatever, also the balance of any money belonging to the asylum in the hands of the steward, or subject to his draft in bank or banks, or in the hands of any person or persons, the receipts of the current month, and to what fund each belongs. These balance sheets shall also show a detailed statement of all receipts and disbursements during the month, together with the name of the payé and the prices paid. They shall be submitted with the balance sheets, the original bills of purchase, vouchers for the same, and receipts for all other disbursements of whatever kind, which bills of purchase, vouchers and receipts, after being carefully folded and numbered, shall have endorsed upon the back of each of the signatures attached thereto, with the day, month, and year of payment. After the said original and duplicate balance sheets shall have been endorsed by the medical superintendent and a majority of the trustees, the steward shall, within two days thereafter, file the original balance sheet in the office of the board of trustees, and the duplicate thereof, with the original bills of purchase, vouchers, and receipts pertaining thereto, he shall file in the office of the auditor of state, having previously taken an oath, to be endorsed on the said balance sheet, that the said balance sheet and accompanying papers is a full, true, and correct account of his stewardship for the preceding month, to the best of his knowledge and belief. [73 v. 80, sec. 8.]

Balance sheets, where filed.

SECTION 11. The steward shall under the direction of the medical superintendent and trustees, make engagements with and discharge those employed in and about the asylum, close all contracts on behalf of and make all purchases for the asylum where they can be made on the best terms, pay the employés in and about the asylum, take vouchers for all expenditures, have a personal supeintendence of the farm, garden, and grounds, and perform such other duties as may be assigned him by the board of trustees or medical superintendent, and not otherwise. The steward shall keep a book, to be called a contract-book, in which shall be recorded all contracts entered into by him and approved by the medical superintendent and trustees, with the name of each and every person interested therein, the signatures of the party or parties of the first part and of the medical superintendent and a majority of the board of trustees to be attached thereto. [73 v. 80, sec. 9.]

Duties of steward.

SECTION 12. To secure a more perfect accountability, the trustees of each asylum shall appoint a competent person as book-keeper and store-keeper, for the term of two years, unless sooner removed for cause, who shall keep all the accounts of the asylum, as provided in section ten, receive and be responsible for all purchases made by the steward and delivered into his keeping, and shall examine, weigh, measure, or

Trustees to appoint book-keeper and store-keeper.

His duties, bond, etc.

gauge every article purchased by the steward for the domestic purposes of the asylum, and receipt to the steward for the same, stating quantity and quality. He shall make a monthly report to the medical superintendent and trustees of all articles on hand at the close of the preceding month the quantity of all articles received during the month, and the quantity of all articles issued during the month, to the different departments of the asylum, upon whose order delivered and to whom delivered, with receipts for the same. He shall give bond in the sum of five thousand dollars, for the faithful performance of his duties, and receive as compensation a sum to be fixed by the trustees, not exceeding six hundred dollars per annum, and his board in the asylum.

Trustees may remove matron, steward, superintendent, etc.

SECTION 13. The board of trustees may at pleasure remove any matron or assistant physician, druggist, or steward, and they may remove the medical superintendent also, for incompetency, gross neglect of duty, or refusal to discharge the duties devolving upon him, or for any misconduct which renders it improper for them longer to continue in the institution. [73 v. 80, sec. 10.]

Qualification of medical superintendent, assistant physician, druggist, etc.

SECTION 14. The medical superintendent of said institution shall be a physician of acknowledged skill and ability in his profession, and shall sustain a good moral character. He shall have the entire control of the medical, moral, and dietetic treatment of the patients, and see that the several officers and employés in the institution faithfully and diligently discharge their respective duties. He shall employ or direct the employment of attendants, nurses, servants, and such other persons as he may deem necessary for the efficient and economical management of the asylum, assign them their respective places and duties, and may, at any time, discharge or direct the steward to discharge any of them from service. The assistant physician and druggists shall be men of good moral character, and possess such other qualifications as to be able to perform the ordinary duties of medical superintendent during the sickness or necessary absence of such medical superintendent; and the medical superintendent and assistant physicians, steward, book-keeper, and matron, shall devote their entire time in the interest of the asylum, to which they may respectively be appointed. [73 v. 80, sec. 12.]

Duties of matron.

SECTION 15. The matron, under the direction of the superintendent, and not otherwise, shall have the general supervision of the domestic arrangements of the institution, and do what she can to promote the comfort and the restoration of the patients. [73 v. 80, sec. 13.]

Treasurer of state may advance sum not exceeding $3,000.

SECTION 16. The treasurer of state may, from time to time, advance the steward on his own order, approved by the medical superintendent and two of the board of trustees, a sum not exceeeding three thousand dollars, to meet current expenses, and he shall account for the whole sum of three thousand dollars before another order is approved. [73 v. 80, sec. 15.]

Counties entitled to send patients in proportion to population.

SECTION 17. Each county shall be entitled to send patients to the asylum of the district in which such county is situated *in proportion to the population of such county.* No person shall be admitted into either of the asylums belonging to the state, except an inhabitant of the district in which the asylum is located; and no person shall be considered an inhabitant within the meaning of this act who has not resided within this state one year next preceding the date of his or her application; and no person shall be entitled to the benefit of the provisions of this chapter, except persons whose insanity has occurred during the time such person shall have resided in this state. All persons who have been or may hereafter be admitted into either of the asylums for the insane belonging to this state, shall be maintained therein at the expense of the state. The trustees may direct the discharge of a patient when they shall deem it expedient. The medical superintendents of each of the asylums shall inform the probate judges of the different counties, comprising the district, monthly of the quota of patients to which each county is entitled, and the number in the asylum from the said county, and the probate judge may at any time forward an acute case: provided, the quota is not full and the papers and clothing supply are in compliance with law. [73 v. 80, sec. 16.]

Qualifications for admission.

Patients may be transferred to other asylums.

SECTION 18. If at any time, either of the asylums cannot accommodate the patients of the district to which it is attached, such patients may be transferred to the asylums of either of the other districts, which may at the time have room for said patients, such transfers to be made upon the order of the governor, upon the recommendation of the medical superintendent of the asylum of each district to be thereby affected. [73 v. 80, sec. 17.]

Proceedings for admission of patients.

SECTION 19. For the admission of patients to any of the asylums for the insane, the following proceedings shall be had, viz: Some resident citizen of the proper county shall file with the probate judge of such county, an affidavit, substantially as follows:

The state of Ohio, ——— county, ss.

——— ———, the undersigned, a citizen of ——— county, Ohio, being sworn, says that he believes —— —— is insane (or that in consequence of his insanity, his being at large is dangerous to the community.) He has a legal settlement in —— township, in this county.

Dated this —— day of ———, A.D. ——.

——— ———,
A. B.

[67 v. 42, sec. 20.]

Same.

SECTION 20. When the affidavit aforesaid shall be filed, the probate judge shall forthwith issue his warrant to some suitable person, commanding him to bring the person alleged to be insane before him on a day in such warrant named, which shall not be more than five days after the affidavit

shall have been filed, and shall immediately issue subpœnas for such witnesses as he shall deem necessary (one of whom shall be a respectable physician), commanding the persons in such subpœnas named to appear before said judge on the return day of the warrant; and if any person shall dispute the insanity of the party charged, the probate judge shall issue subpœnas for such person or persons as shall be demanded on behalf of the person alleged to be insane: provided, that if, by reason of the character of the affliction or insanity of said person, it should be deemed unsuitable or improper to bring said person into such probate court, then said probate judge shall personally visit said person and certify that he has so ascertained the condition of said person by actual inspection, and all proceedings as herein required, may then be had in the absence of said person. [53 v. 81, sec. 21; S. & C. 840.]

SECTION 21. At the time appointed (unless for good cause the investigation shall be adjourned) the judge shall proceed to examine the witnesses in attendance; and if, upon the hearing of the testimony, such judge shall be satisfied that the person so charged is insane, he shall cause a certificate to be made out by the medical witness in attendance, which shall set forth the following:

Same.

1. That the patient is free from any infectious disease and vermin.
2. The age of the patient, and a concise history of the case.
3. The duration of the disease, dating the first symptom, and specifying the number and duration of previous attacks.
4. The supposed cause of the disease, and whether it is hereditary.
5. Whether the patient has been subject to epilepsy.
6. Whether the patient has made any attempt to commit violence on himself or others.
7. The medical treatment pursued in the case, as near as the same can be ascertained, to which the witness shall add any other information or circumstances known to him which may tend to throw light upon the subject. [53 v. 81, sec. 22; S. & C. 840.]

SECTION 22. The probate judge, upon receiving the certificate of the medical witness, made out according to the provisions of the preceding section, shall forthwith, apply to the superintendent of the asylum for the insane situated in the district in which such patient shall reside. He shall, at the same time, transmit copies, under his official seal, of the certificate of the medical witness, and of his finding in the case.

Same.

Upon receiving the application and said certificate, the superintendent shall immediately advise the probate judge whether the patient can be received, and, if so, at what time. The probate judge, when advised that the patient will be received, shall forthwith issue his warrant to the sheriff, or any other suitable person, commanding him to forthwith [to] take

charge of and convey such insane person to the asylum. If the probate judge shall be satisfied from proof, that an assistant is necessary, he may appoint one person as such assistant. The warrant of the probate judge shall be substantially as follows:

The state of Ohio, ——— county, ss:

Office of the probate judge of said county:

To ——— ———:

All the proceedings prescribed by law to entitle ——— ——— to be admitted into the asylum for the insane having been had, you are commanded forthwith to take charge of and convey said ——— ——— to the asylum for the insane at ———, and you are authorized to take ——— ———, as assistant. After executing this warrant, you shall make due return thereof to this office.

Witness my hand and official seal, this —— day of ———, A.D. ——.

——— ———,
probate judge.

Upon receiving such patient, the superintendent shall endorse upon said warrant, a receipt substantially as follows:

Asylum for the insane, at ———,
——— ———, A D. ——.

Received this day, of ——— ———, the patient named in the within warrant.

——— ———,
superintendent.

This warrant, with the receipt of thereon, shall be returned to the probate judge who issued the same, and shall be filed by him, with the other papers relating to the case. In all cases, the relatives of the insane person shall have a right, if they choose, to convey such insane person to the asylum for the insane, and in such case the warrant shall be directed to one of such relatives, directing him to take another of such relatives as his assistant: provided, that in case the medical witness shall not state in his certificate that the patient is free from any infectious disease and from vermin, it shall be the duty of the probate judge to refuse to make the application to the superintendent, as hereinbefore provided, until such certificate is furnished. The relatives of any person charged with insanity, or who shall be found to be insane, shall, in all cases, have the right to take charge of and keep said insane person or persons charged with insanity, if they desire so to do; and in such case the probate judge before whom the inquest shall have been held, shall deliver such insane person to the person or persons desiring to take such person. [53 v. 86, sec. 25; S. & C. 840.]

Same.

SECTION 23. When a patient is sent to the asylum for the insane, it shall be the duty of the probate judge to see that the patient is supplied with the proper clothing, and, if not otherwise furnished, the probate judge shall furnish such clothing, and in such case the same shall be paid for upon

Probate judge to see that patient has proper clothing.

the certificate of the probate judge and the order of the county auditor, out of the county treasury. For a male patient, the clothing shall be a coat, vest, and two pairs of pantaloons, all of woolen cloth; two pairs of woolen socks, two pocket handkerchiefs, two cravats, one hat or cap, a pair of shoes or boots, pair of slippers, three cotton shirts, two pair drawers, two undershirts, and an overcoat or other outside garment sufficient to protect him in severe weather. For a female patient, such clothing shall be, two substantial gowns or dresses, two flannel petticoats, two pairs of woolen stockings, one pair of shoes, one pair of slippers, two handkerchiefs, a decent bonnet, two cotton chemises, and large shawl or cloak. In both cases, the clothing shall be new, or as good as new, and the woolens of a dark color. Such clothing shall be delivered in good order, with the patient, to the superintendent, and, without such clothing, the superintendent shall not be bound to receive the patient. [53 v. 81, sec. 24; S. & C. 840.]

Proceedings where insane person cannot be admitted to asylum.

SECTION 24. If any person found to be insane cannot, for any cause, be admitted into the asylum for the insane, the probate judge shall direct the sheriff of the county, or some other suitable person, to take charge of such insane person until such cause shall be removed, and if necessary, may direct the confinement of such insane person in the county infirmary or jail, as the circumstances may require, and if all things needful be not otherwise supplied, he shall furnish them, and in such case the same shall be paid for out of the county treasury, on the certificate of the probate judge: provided, that such judge shall not, in any case, furnish anything, either in the way of clothing, or for any other purpose, to a person who is not in needy circumstances: and, provided, further, no insane person shall be confined in the same room with a person charged with or convicted of a crime. [53 v. 81, sec. 25; S. & C. 840.]

SECTION 25. When an insane person not entitled to admission into an asylum for the insane shall be at large, and his being so at large shall be dangerous to himself or others, upon such fact being established to the satisfaction of the probate judge, he shall immediately order such lunatic to be confined and provided for, as directed by the next preceding section; and when any person shall be so confined, and the attending physician shall certify that such person is restored to reason, or that it is not necessary longer to confine such person, or if the friends of such person shall agree to take the care of such person, the probate judge shall immediately order his discharge. [53 v. 31, sec. 26; S. & C. 840.]

How patient may be discharged.

SECTION 26. Any patient may be discharged from an asylum for the insane upon the application of the superintendent to one of the trustees, and order of such trustee Incurable and harmless patients may be discharged whenever such discharge is necessary to make room for a recent case from the same county; and whenever an order shall be made out

for the removal of a patient from an asylum for the insane, the superintendent shall forthwith give notice thereof, under seal of the asylum to the probate judge of the county from which such patient was sent, and thereupon such probate judge shall forthwith issue his warrant to the sheriff or some other suitable person (giving the relatives of the patient the preference) which warrant shall be substantially as follows:

THE STATE OF OHIO, ——— COUNTY, ss.

Office of the probate judge of said county.

The proper authority having directed ——— ———, a patient from this county, in the asylum for the insane, at ———, be removed from said asylum, you are commanded forthwith to remove said patient and return him to ——— township, in this county, of which he is an inhabitant.

Witness my hand and official seal, this —— day of ———, A.D. ——. A. B., *probate judge.*

Upon the receipt of such warrant it shall be the duty of the person to whom it is directed to forthwith execute the same, and return it to the probate judge by who it was issued. [53 v. 81, sec. 27; S. & C. 840.]

SECTION 27. When a patient is discharged as cured, the superintendent may furnish such patient with suitable clothing, and such sum of money as he shall deem fit, not in any case exceeding twenty dollars. [53 v. 81, sec. 28; S. & C. 840.]

How patients selected where application is made for more than asylum will contain.

SECTION 28. If application shall be made to any asylum for the insane for admission of more patients than such institution can accommodate, a selection shall be made as follows: 1. Recent cases, that is, where the disease is of less than one year's duration, shall have the preference over all others in the same county. 2. Chronic cases that is, when the disease is of more than one year's duration, presenting the most favorable prospect of recovery, shall be next preferred. 3. Those for whom applications have been longest on file, other things being equal, shall next be preferred. 4. No county shall have in any institution more than its just proportion according to its population, except in cases where some other county in the same asylum district shall not have a sufficient number of patients to fill up its proportion. In such cases the superintendent may admit from any county more than its just proportion, giving preference to patients applying as hereinbefore provided. [53 v. 81, sec. 29; S. & C. 840; 67 v. 42, secs. 2, 5; 68 v. 88, sec. 1.]

Proceedings where person becomes again insane after his discharge from asylum.

SECTION 29. When any patient discharged from an asylum for the insane as cured, shall again become insane, and any respectable physician shall file with the probate judge of the county of which said insane person shall be an inhabitant an affidavit setting forth the fact of the recurrence of the disease, and such other facts relating thereto as he may deem proper, the probate judge shall forthwith transmit a copy of such affidavit, authenticated by his official seal, to the superintend-

ent of the proper asylum, and thereupon the same proceeding shall be had as provided in this chapter for persons found to be insane upon inquest held for that purpose. [53 v. 81, sec. 30; S. & C. 840.]

Persons confined as insane to have benefit of habeas corpus.

SECTION 30. All persons confined as insane shall be entitled to the benefit of the writ of habeas corpus, and the question of insanity shall be decided at the hearing; and if the judge shall decide that the person is insane, such decision shall be no bar to the issuing of the writ a second time, whenever it shall be alleged that such person has been restored to reason. [53 v. 81, sec. 31; S. & C. 840.]

Papers in case of inquest to be preserved.

SECTION 31. In all cases of inquests held under the provisions of this chapter the probate judge shall file and carefully preserve all papers filed with him, and shall make such entries upon his docket as will, together with the papers filed as aforesaid, preserve a perfect record of each case tried by him. [53 v. 81, sec. 33; S. & C. 840.]

When patient dies relatives to be notified.

SECTION 32. In all cases in which any patient shall die in either of the asylums for the insane of this state, it shall be the duty of the superintendent of the asylum to immediately notify the relatives of such deceased patient, if known to him, and if not so known, he shall immediately notify the probate judge of the county from which such patient was sent, who shall forthwith cause a notice of the death of such patient to be published in two of the leading newspapers printed in such county. [53 v. 81, sec. 34; S. & C. 840.]

Patient escaping to be arrested.

SECTION 33. If any patient shall escape from any asylum for the insane, and return to the county from whence he was committed, it shall be the duty of the sheriff of such county, when notified by the superintendent, to forthwith arrest such patient and return him to the asylum, for which service the sheriff shall be allowed and paid such fees as shall be allowed by law for the committment of insane persons to the asylums, which fees shall be paid by the steward on the certificate of the superintendent. [53 v. 81, sec. 35; S. & C. 840.]

Bond required where friends of patient want his discharge.

SECTION 34. If the friends of any patient shall ask the discharge of such patient from the asylum for the insane, the superintendent may, in his discretion, require a bond to be executed to the state of Ohio, in such sum and with such sureties as he may deem proper, conditioned for the safe keeping of such patient: provided, that no patient who may be under the charge of or convicted of homicide shall be discharged without the consent of the superintendent and the board of trustees having the charge of such asylum. [53 v. 81, sec. 36; S. & C. 840.]

SECTION 35. Prosecuting attorneys shall attend to all suits instituted in behalf of the asylums for the insane, and shall be entitled to a compensation of five per cent. on all sums collected for the same. [53 v. 31, sec. 38; S. & C. 840.]

SECTION 36. The taxable costs and expenses to be paid under the provisions of this chapter shall be as follows: To

Costs in cases of inquest.

the probate judge with whom the affidavit is filed, the sum of two dollars for holding an inquest, for each warrant, certificate, or supœna he may necessarily issue, the same fees as are or may be allowed by law to the clerk of the court of common pleas for similar services, and the amount of postage on all communications to and from the superintendent which the said judge may be required to pay; to the medical witness who makes out the certificate, two dollars and witness fees, such as are allowed by law in other cases; to the witnesses and constables, the same fees as are allowed by law for like services in other cases, to each person employed by the probate judge to commit a lunatic to the county infirmary, seventy-five cents per day; to the superintendent of the county infirmary or jailer, for keeping an idiot or insane person, thirty-five cents per day; to the sheriff or other person than an assistant, for taking an insane person to the asylum for the insane, or removing one therefrom upon the warrant of the probate judge, mileage at the rate of ten cents per mile, going and returning, and seventy-five cents per day for the support of each patient, on his journey to or from the asylum, and to each assistant five cents per mile, and nothing more; the number of miles to be computed in all cases by the nearest route traveled; and costs specified in this section to be paid out of the county treasury, upon the certificate of the probate judge. [53 v. 81, sec. 40; S. & C. 840]

Definition of terms.

SECTION 37. The terms insane and lunatic, as used in this chapter, include every species of insanity or mental derangement. The term idiot is restricted to a person foolish from birth, one supposed to be naturally without a mind. A person with a family is one who has a wife and child or either. The words "needy circumstances" when applied to a person without a family, shall mean one whose estate, after payment of his debts, and excluding from the estimate such part of his estate as is exempt from execution, is worth less in cash than five hundred dollars; and the same words, when applied to a person having a family, shall mean one whose estate, estimated as aforesaid, is worth less in cash, after payment of his debts and the support of his family for one year, than one thousand dollars: provided, that when the said words are applied to a married woman, her estate, and that of her husband, shall be estimated as aforesaid, and the amount shall determine the question, as aforesaid, whether she be in needy circumstances or not, within the meaning of this chapter. [53 v. 31, sec. 63; S. & C. 840]

SECTION 38. When the probate judge shall issue his warrant for the removal to an asylum for the insane of any insane person temporarily committed to a county infirmary, the certificate of the superintendent of such infirmary, or the physician in charge thereof, that the condition of such insane person, by recovery or otherwise, has so changed as to make it unsuitable to remove him or her to the asylum, shall be a sufficient return to said warrant; and the superintendent of

such infirmary is hereby authorized, in case such person has recovered, to discharge him or her from the county infirmary. [54 v. 104, sec. 2; S. & C. 851.]

Acts repealed.

SECTION 39. The following acts and parts of acts are hereby repealed:

1. Sections twenty-one, twenty-two, twenty-five, twenty-six, twenty-seven, twenty-eight, thirty, thirty-one, thirty-three, thirty-four, thirty-five, thirty-six, thirty-eight, and forty of the act of April 7, 1856, entitled "an act to provide for the uniform government and better regulation of the lunatic asylums of the state, and the care of idiots and insane." [53 v. 31; S. & C. 840]

2. The act of April 11, 1857, entitled "an act to amend 'an act entitled an act to provide for the uniform government and better regulation of the lunatic asylums of the state, and the care of idiots and the insane,'" passed April 7, 1856. [54 v. 104; S. & C. 851.]

3. The act of April 12, 1870, entitled "an act to provide for extending the protection and benefits of the lunatic asylums of the state to the chronic insane, and to repeal section one of an act entitled 'an act to amend section nineteen of an act, passed April 7, 1856, entitled an act to provide for the uniform government, and better regulation of the lunatic asylums of the state, and the care of idiots and the insane,' passed April 16, 1862, and to amend section twenty of the original act to which said section one is amendatory." [67 v. 42.]

4. The act of April 29, 1871, entitled "an act supplementary to an act entitled 'an act to provide for extending the protection and benefits of the lunatic asylums of the state to the chronic insane,'" passed April 12, 1870. [63 v. 88]

5. The act of March 27, 1876, entitled "an act to better provide for the organization, regulation, and management of asylums for the insane," except sections fourteen, eighteen, nineteen, and twenty, of said act. [73 v. 80.]

6. The act of March 20, 1877, entitled "an act to amend section two of an act to better provide for the organization, regulation and management of asylums for the insane," passed March 27, 1876. [74 v. 59.]

SECTION 40. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed March 23, 1878.

[Senate Bill No. 72.]

AN ACT

To authorize the secretary of state to reissue charters of incorporation which have been lost or destroyed.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That whenever it shall be made to appear to the satisfaction of the secretary of state that any religious society or corporation heretofore organized or incorporated under the laws of this state has lost its charter or certificate of incorporation, or that the same has been destroyed, it shall be the duty of the secretary of state to issue a new certificate of incorporation of such religious society or corporation theretofore issued, and the time as near as may be ascertained of issuing such lost or destroyed certificate as shall be made to appear to him; and thereupon all deeds, mortgages, or other instruments of writing for the conveyance of land, as well as all acts done by such religious society or corporation by virtue of such certificate or charter theretofore lost, shall be binding and of full force in law and in equity: Provided, that nothing in this act shall be so construed as to make valid any act not authorized under the laws of this state which heretofore have been in force.

Duty of secretary of state.

Effect of charter.

SECTION 2. The fact that a religious society for not less than thirty years, claiming to have been duly and legally incorporated as such, and performing during such time duties and exercising rights as such, shall be prima facie evidence of the original issue of such charter or certificate of incorporation as claimed by such society.

Thirty years' exercise of corporate rights prima facie evidence of incorporation.

SECTION 3. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed March 25, 1878.

[Senate Bill No. 64.]

AN ACT

Supplementary to an act entitled "an act to provide for the appointment of guardians for imbeciles," passed April 27, 1872. (Vol. 69 O. L., p. 174.)

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That whenever the sale of the real estate of any imbecile is necessary for his support, or the support of his family, or the payment of his debts, or such sale will be for the interest of such imbecile or his children, his guardian may sell the same under like proceedings as are or may be required by law to authorize the sale of real estate by the guardians

Guardian may sell real estate of imbeciles for support of his family, etc.

of a minor; or, if it be more for the interest of such imbecile or his children, the probate court, upon the petition of the guardian, may authorize him to sell said real estate at private sale, either in whole or in parcels, and upon such terms of payment as shall be prescribed by the court. Said petition shall contain a pertinent description of the real estate proposed to be sold, a statement of its value as nearly as can be ascertained, and the facts upon which the application is founded; and if, upon the hearing, the court shall be satisfied that it will be more for the interest of the imbecile that said real estate should be sold at private than at public sale, the court may make an order authorizing said sale and prescribing the terms thereof, first taking from said guardian a sufficient bond, in double the appraised value of the property to be sold, for the faithful performance of his duty in the premises, and for accounting for the proceeds of all sales made under such order: Provided, however, that before any order authorizing such private sale be made, the court shall cause an appraisement of such real estate to be made by three disinterested freeholders of the county, and said guardian shall be prohibited in said order from selling said land at less than the appraised value thereof.

Proceedings to obtain order of sale.

SECTION 2. The guardian of an imbecile, whether appointed by a court in this state or elsewhere, may complete the real contracts of his ward, or any authorized contract of a guardian who has died or been removed, in like manner and by like proceedings as the real contract of a deceased person may, under an order of court, be specifically performed by his executor or administrator; or the probate court may, in its discretion, authorize the guardian of an imbecile to complete any contract for the sale of real estate made before his or her imbecility, in the same manner as executors may do who are authorized by will to complete contracts for the sale of real estate made by their testator, said guardian first giving bond to the satisfaction of the court, in double the amount of any money or property to be received under such contract, for the protection, appropriation or investment of the fund accruing on said contract.

Guardian of imbecile may complete real contracts.

SECTION 3. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed March 26, 1878.

[Senate Bill No. 27.]

AN ACT

To change certain specified times fixed for holding courts of common pleas in the counties of Fairfield, Perry, and Hocking, for the year A.D. 1878.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the times fixed by the judges of the seventh judicial district for holding the terms of the common pleas court in the county of Fairfield for the year A D. 1878 be changed so as to be held as follows: On March 18, instead of January 28; on June 10, instead of May 13; on November 25, instead of October 7. That the times herein specified fixed by the judges of said district for holding two of the terms of the common pleas court in the county of Hocking for the year A.D. 1878 be changed so as to be held as follows: On May 20, instead of June 10; on November 4, instead of November 5. That the time fixed by said judges for holding a term of the common pleas court in the county of Perry on September 3, 1878, be changed so as to hold said term on October 14, 1878.

SECTION 2. That this act take effect from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed January 23, 1878.

[House Bill No. 18.]

AN ACT

To facilitate the administration of justice in the third sub-divison of the fifth judicial district.

Additional judge in the fifth judicial district.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That for the fifth judicial district, there shall be an additional judge of the court of common pleas, who shall be a resident of the third sub division of said district, which is composed of the county of Franklin, and who shall be elected by the qualified electors of said sub-division, on the first Monday in April, 1878.

His term of office, and when to begin.

SECTION 2. That the term of office of such additional judge shall begin on the first Monday in May, 1878, and he shall qualify in the same manner, hold such office for the same term of years, be elected with the same powers and jurisdiction, and be liable to the same penalties, as are now or may hereafter be conferred and enjoined by the constitution and laws of the state of Ohio, upon other judges of said court.

Sheriff to give notice by proclamation.

SECTION 3. That it shall be the duty of the sheriff of said Franklin county, at least fifteen days prior to the first Monday of April, 1878, when an election for such additional judge is to be held, to give notice, by proclamation, of the time and place of holding such election, which shall be conducted, and the returns thereof made in the same manner as required by law in case of the election of other judges of the court of common pleas, and the abstract and certificate of election shall be transmitted by the clerk of the court of common pleas, of Franklin county, to the secretary of state, who shall certify the same to the governor, and thereupon the governor shall issue a commission to the person elected such judge.

Compensation of such judge.

SECTION 4. That such additional judge shall receive the same compensation that now is or hereafter may be allowed to other judges of said court; and whenever a vacancy shall occur in his office, such vacancy shall be filled as in vacancies in the office of other judges of said court.

Court may continue and adjourn trial to next term.

SECTION 5. That whenever a jury shall have been empannelled for the trial of any case, or whenever any action, either at law or in equity, shall be on trial in the said common pleas court, and it shall be deemed proper in the discretion of the court, by reason of the approaching termination of any term of said court, or for any other cause, to continue and adjourn such trial to the next succeeding term, it shall be lawful for the court to order and direct that the trial be adjourned to a day certain, on which day the case shall proceed and be disposed of as if the trial had commenced at such succeeding term.

To be two terms of the district court each year.

SECTION 6. That there shall be two terms of the district court, of said county, held in each year; and the court of common pleas, in the discretion of the judges thereof, may commence or continue its session during the session of said district court.

Commissioners of county to provide suitable room for additional judge.

SECTION 7. That the commissioners of said county of Franklin shall, in addition to the rooms now in use by said court of common pleas, provide a suitable room for the use and occupancy of such additional judge, while sitting as one of the judges of said court.

SECTION 8. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed February 21, 1878.

[Senate Bill No. 89.]

AN ACT

To fix the time for holding an additional term of the district court in Jackson county.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That in addition to the regular term of the district court for the county of Jackson, fixed by the judges of the seventh judicial district of Ohio, beginning September 20, 1878, there shall be held in said county an additional term of said court, at the court house, in the village of Jackson, beginning Wednesday, April 24, 1878. And all cases pending in said court, for said county, on said April 24, 1878, shall be for trial in such order as the court may direct.

SECTION 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed March 26, 1878.

[House Bill No. 50.]

AN ACT

To amend section twenty-seven of an act entitled "an act for the reorganization and maintenance of common schools," passed March 6th, 1874. (Vol. 71, O. L., p. 18.)

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That section twenty-seven of said act be so amended as to read as follows:

Section 27. There shall be elected by ballot, on the second Monday of April, annually, in each sub-district, by the qualified electors thereof, and residing within said sub-district, one competent person, having the qualifications of an elector therein, to be styled local director, who shall hold his office for three years from the first Monday succeeding his election, and until his successor is elected and qualified. Said local director, within five days after his election, shall take an oath or affirmation to support the constitution of the United States, and that of the state of Ohio, and faithfully and impartially to discharge the duties of his office, which oath or affirmation may be administered by any local director of any sub-district of the township, or by the clerk thereof; and it shall be the duty of the clerk of each sub-district to post up written or printed notices in three or more conspicuous places in their respective sub-districts, at

Local director of sub-district; his election, oath, bond, etc.

least six days prior to the day of election, designating the day and hour of opening, and the hour of closing said election.

SECTION 2. That section twenty-seven of the above recited act be and the same is hereby repealed.

SECTION 3. This act shall be in force and take effect from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed March 26, 1878.

[House Bill No. 253.]

AN ACT

Supplementary to the acts relating to criminal procedure.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That no prosecuting attorney shall be permitted to enter a nolle prosequi in any case, without leave of the court, or a judge thereof, in open court, on good cause shown, and any nolle entered contrary to the provisions of this act shall be void.

SECTION 2. This act shall take effect and be in force from and after its passage.

JAMES E NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed March 28, 1878.

[House Bill No. 164.]

AN ACT

To amend section nine of an act entitled "an act supplementary to an act entitled 'an act to provide for the creation and regulation of incorporated companies in the state of Ohio,'" passed May 1, 1852; passed April 15, 1867 (S. & S. 186); as amended February 25, 1869 (O. L., v. 66, p. 11); as amended April 20, 1874 (O. L., v. 71, p. 161); as amended April 11, 1876 (O. L., v. 73, p. 188); as amended March 12, 1877 (O. L., v. 74, p. 38).

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That section nine be so amended as to read as follows:

Section 9. Corporations may also be formed under this act for the following purposes:

1. For the preservation and exhibition of works of arts.

2. For encouraging and cultivating a taste for music.

3. For advancement of legal, medical, theological, and religious knowledge, and knowledge in all the sciences, arts, trades, business, and professions in life, and the better and more convenient discharge of duties connected therewith.

4. For the formation and encouragement of floral, horticultural, nursery, and fruit companies; and for planting and growing trees for timber and for shade, and for planting and growing hedges.

5. For cutting, quarrying, buying and selling marble, iron, slate, ice, or other material or artificial products.

6 For the promotion of agriculture, and the mutual benefit and gain of those engaged therein, in the purchase and sale of stock, commodities, and articles pertaining thereto, including household necessaries and luxuries.

7. For engaging in and carrying on the business of making and furnishing abstracts of title to real estate.

8. For the purpose of transporting freight and passengers in cities.

9. For the purpose of establishing and conducting public libraries

10. For the formation and encouragement of harvest home festivals, and popular instruction, enjoyment, and displays of husbandry incident thereto.

11. For the protection of birds and other game.

12. For the protection of horses, mules, and other live stock, and for the prosecution of theft of same.

SECTION 2. That the act to amend section nine, amended as aforesaid, be and the same is hereby repealed.

SECTION 3. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed March 28, 1878.

[House Bill No. 301.]

AN ACT

To amend section twenty-eight of an act entitled "an act relating to roads and highways," as amended April 11, 1876. (O. L., vol. 73, p. 185.)

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That section twenty-eight of the act to which this is an amendment be amended so as to read as follows:

Section 28. That each supervisor shall receive for his services pay at a rate not exceeding one dollar and fifty cents per day for the time he is actually employed on the roads: Compensation of road supervisor.

provided, that no supervisor shall be allowed in any one year a sum exceeding twelve dollars in addition to the commutation for his two days' labor on the roads provided for in this act, when the number of persons in his district liable to do work on the public highway do not exceed twenty-five; and any supervisor having more than twenty-five and less than thirty-five persons in his district liable to do work on the public highway shall receive for his services not exceeding one dollar and fifty cents per day for the time he is actually employed on the roads, but shall not receive more than sixteen dollars in any one year; any supervisor having more than thirty-five persons in his district liable to do work on the public highway shall receive for his services not exceeding one dollar and fifty cents per day for the time he is actually employed on the roads, but shall not receive more than twenty-five dollars in any one year: provided, that any supervisor that is required by any law of the state to repair a turnpike road, or any part thereof, shall be allowed not exceeding eight per cent. for the amount of the labor performed under his direction as supervisor, repairing such turnpike or working out the road tax in his district, but in no case shall he receive more than one dollar and fifty cents per day.

SECTION 2. That section twenty-eight of the act to which this is an amendment be and the same is hereby repealed.

SECTION 3. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed March 28, 1878.

[House Bill No. 293.]

AN ACT

To amend section thirty-five of the act of May 1, 1873 (70 v. 195), entitled "an act for the organization and maintenance of common schools."

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That section thirty-five of the act of May 1, 1873 (70 v. 195), entitled "an act for the reorganization and maintenance of common schools," be amended so as to read as follows:

School in joint sub-district to be under control of township board of education.

Section 35. The school in such joint sub-district shall be under the control of the board of education of the township in which the school-house is situated, of which board the local director who has been elected clerk of said joint sub-district shall be a member; but such school shall be supported from the school funds of the respective townships

having territory in said joint sub-district in proportion to the enumeration of youth; and the board of education having charge of said joint school shall make the proper estimates of the share of expenses, estimated pro rata by examination, of every kind necessary to sustain it, to be paid by each of the said townships so united, and shall certify such estimates to the auditor of the proper county, who shall add the same to the annual estimates for school purposes, made and certified by the boards of education of said townships respectively, and shall assess and collect the same as parts of such township estimates; and at the time of distributing the school funds, the county auditor shall transfer from the adjoining townships the amount assessed and collected for the support of said joint school to the township having control of said joint school, and certify to the clerk and treasurer of each township the amount due the same, including state tax, sale or rent of school lands, township tax, or from other sources; and the board of education having charge of a joint sub-district shall keep such accounts as will show the funds received from such township having territory therein and the disposition thereof, which accounts, with a statement of the whole amount of funds applied to such joint school, shall be reported at the end of the school year to the board of education of every other township having territory in such joint sub-district.

Board to make and certify estimates to county auditor.

Accounts to show what.

SECTION 2. Section thirty-five of said act of May 1, 1873 (70 v. 195), is hereby repealed; and this act shall be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed March 28, 1878.

[Substitute for House Bill No. 163.]

AN ACT

To authorize the vacation of turnpike and plank roads which are suffered to be out of repair, and to establish the same as county roads.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That any turnpike or plank-road in the state of Ohio, upon which toll shall have been or may be authorized to be taken, which has been or shall hereafter be out of repair for the period of six months, shall be deemed and held abandoned, and upon such abandonment being declared as hereinafter provided, it shall be unlawful for any company or person owning or claiming to own such road, or any person owning or claiming to own the right to take tolls thereon, or any person in behalf of such company or person to take, demand,

Turnpike or plank toll road out of repair six months shall be held abandoned.

Unlawful to collect toll thereon.

or receive toll for the use of such road, or so much thereof as may be so declared abandoned.

Proceedings for declaring road abandoned.

SECTION 2. Any twelve or more freeholders of any county, in or through which any toll turnpike or plank-road, or any part thereof, has been or may hereafter be constructed, may present to the probate court of any county in which such road or part thereof is situated, their petition, stating that such road or part thereof, has not been kept in repair for the preceding six months, and praying that the same may be declared abandoned and vacated as a toll road, to which petition the company or person or persons owning or claiming to own the same, and all persons owning or claiming to own the right to take toll thereon, shall be made defendant or defendants, and immediately on the filing of such petition, the said court shall fix a time for the hearing thereof not less than thirty days, nor more than forty days thereafter, and issue a notice in writing, to the defendant or defendants, stating the filing of such petition, and the day fixed for hearing thereof, and requiring said defendant or defendants to appear and answer, which notice shall be served in the same way as a summons in civil cases; and on the hearing of such petition, if the court find that said road or part thereof, has been out of repair as aforesaid, the court shall declare the same abandoned and vacated as a toll road. If the defendants or any one of the defendants are non-residents of the state of Ohio, and this fact is made to appear by affidavit on the filing of said petition, the court shall order notice to be given by the petitioners to such non-resident defendants, by publication for three consecutive weeks in some newspaper printed and of general circulation in said county, stating the time when such petition will be for hearing, and the object and prayer thereof, which publication shall be deemed sufficient service.

County commissioners to declare abandoned turnpike or plank-road a county road.

SECTION 3. Whenever a toll road or part thereof, has been declared abandoned and vacated as aforesaid, it shall be the duty of the probate court, to file a certified copy of its finding and judgment, with the county commissioners of such county, who may thereupon declare the said road or part thereof, to be a county road, if in their opinion the public convenience requires the same to be established as a county road, and if so declared a county road, the same shall be in all respects treated as other county roads.

SECTION 4. The act of March 13, 1862, entitled "an act to authorize the county commissioners to appropriate as county roads, turnpikes and plank-roads, that have been or shall hereafter be abandoned" (59 v. 26, S. & S. 679), and the act of February 26, 1875, to amend section one of said act, as amended April 2, 1866 (72 v. 43), be and the same are hereby repealed; and this act shall take effect from its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
Passed March 28, 1878. *President pro tem. of the Senate.*

[House Bill No. 240.]

AN ACT

To amend an act entitled "an act supplementary to an act entitled an act to provide for the organization and government of municipal corporations, passed May 7, 1869," passed April 28, 1873. (O. L., vol. 70, p. 179.)

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That said above named act be so amended as to read as follows:

That in all cities of the first class and cities of the second class having a population of twenty thousand and over, and all cities of the second class which had by the last federal census a population of eleven thousand and eighty-two, and not less than eleven thousand and eighty-one, half of the amount of tax raised for bridge purposes, and levied by the county commissioners, upon property within such cities, in all cases where the city councils thereof shall demand it, shall be paid into the city treasury, and shall be expended by such cities for building and repairing bridges within such cities respectively; provided, this act shall also apply to all taxes levied for the year 1877, and not yet expended.

SECTION 2. That said original act to which this is an amendment, be and the same is hereby repealed; and this act shall be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed March 29, 1878.

[House Bill No. 129.]

AN ACT

Supplementary to an act entitled "an act providing for converting toll roads," passed May 3, 1875. (O. L., v. 70, p. 256.)

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That any person or persons owning the right to take toll on any toll road, or the road of any incorporated turnpike company, in this state, which right has been purchased under the provisions of the act of the general assembly of the state of Ohio, passed February 8, 1826, entitled "an act for the regulation of turnpike companies," (S. & C., v. 1, p. 337) may sell said right to take toll to the county commissioners of the county in which said road, or any part thereof, may be located, under the provisions and in conformity, so far as the same may be applicable, to the act of the general assembly of the state of Ohio entitled "an act further pro-

Persons owning the right to take toll on toll road may sell such right to county commissioners.

viding for converting toll roads into free roads," passed May 3, 1873, (O. L., v. 70, p. 255).

After such sale to commissioners, road to become free road.

SECTION 2. After the purchase of said right to take toll by the county commissioners, as provided in the foregoing section of this act, said road shall immediately thereafter become a free road for the period of the said right to take toll so as aforesaid purchased.

SECTION 3. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed March 29, 1878.

[House Bill No. 411.]

AN ACT

To prescribe the duties of marshal in certain incorporated villages.

Marshal of certain villages to be street commissioner.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That incorporated villages having a population of one thousand four hundred and seventeen at the last federal census, the marshal of such incorporated village shall, in addition to his duties prescribed by law, also perform the duties of street commissioner; no other street commissioner shall be elected or appointed in such incorporated village.

His compensation.

SECTION 2. For his services, the marshal of such incorporated village shall receive a compensation not exceeding five hundred dollars per annum, the amount to be fixed by the council of said village.

SECTION 3. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed March 29, 1878.

[House Bill No. 130.]

AN ACT

For the better regulation of insurance companies issuing fire policies.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That any fire insurance company doing business under the laws of this state, which shall hereafter issue pol-

icies of insurance covering any property located in this state, and on such policies shall receive from the person insured, cash payment of premium, notes subject to assessment, for payment of losses, or notes for the installments of premium, shall be required to insert in every policy so issued, an obligation to cancel said policy at any time, upon the written request of the person insured, on conditions as provided in the following sections of this act.

Insurance company to insert in policy obligation to cancel policy at request of insured.

SECTION 2. When policies issued on the cash plan are canceled, in accordance with the provisions of section first of this act, the companies so issuing shall have the right to retain customary short rates, as now established and charged by companies doing a cash business, for the time the policy has been in force, and return to the insured the unearned premium on said policy for unexpired time.

May charge short rates for time the policy has been in force.

SECTION 3. When policies issued on the mutual plan are canceled, as per section one of this act, the companies so issuing shall be required to surrender to the insured the note or notes received from the insured for premium or payment of losses; such policies shall first be sent to the secretary or agent of the company, and sixty days after the receipt of such policy for cancellation, the premium note shall be returned; provided the assured shall have first paid his proportion of all losses which shall have actually occurred up to the date when said policy was received for cancellation; and the company shall not be liable for any loss under such policy after the policy was returned for cancellation.

When policies on mutual plan are canceled premium notes to be surrendered.

SECTION 4. Policies issued on the installment plan, when canceled in accordance with the provisions of section one of this act, the companies so issuing shall be entitled to collect and receive of the insured customary short rates for the time the policy has been in force, to be computed on the full term of insurance mentioned in the policy as now charged by such companies, and on receipt of such short rates, shall be required to return all installment notes then unpaid, and shall refund to the insured any premium collected in excess of such short rates.

Where policies are on installment plan, company may collect short rates and shall return installment notes.

SECTION 5. Companies doing business under the laws of this state, receiving notes in consideration of premiums on their policies, shall be required to insert on the face of each note the following words, to wit: "It is hereby understood and agreed that this note is not transferable."

Companies receiving notes in payment of premiums must indorse notes not transferable.

SECTION 6. Whenever it shall come to the knowledge of the superintendent of insurance, or any officer that may have charge of the insurance department of this state, that any of the provisions of this act shall have been violated, he shall at once proceed to make a thorough investigation, and upon receiving sufficient proof of such violation, he shall be required to revoke the certificate of authority of any company guilty of such violation.

In case of violation of provisions of this act superintendent of insurance to revoke certificate of authority.

SECTION 7. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed April 4, 1878.

[House Bill No. 285.]

AN ACT

To amend an act entitled "an act to amend section thirty-four of an act entitled 'an act to provide for the creation and regulation of incorporated companies in the state of Ohio,'" passed May 1, 1872. (S. & C., 295, O. L., 74, p. 180,) passed May 7, 1877.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That section thirty-four of the above entitled act be amended so as to read as follows:

Turnpike and plank-roads to be opened not exceeding sixty feet wide.

Section 34. That all turnpikes and plank-roads shall be opened not exceeding sixty feet wide, thirty feet of which shall be cleared of brush and logs, and at least sixteen feet shall be made an artificial road composed of stone, gravel, wood, or other convenient material, well compact together in such a manner as to secure a firm, even, and substantial road, and in no case shall the ascent in any such turnpike or plank-road be greater than five degrees; provided, that no company or association of individuals, which has been or may hereafter be incorporated, for the purpose of making any turnpike or plank road, shall be authorized to erect any toll-gate and collect tolls within the existing corporate limits of any city or incorporated village, or within eighty rods of such limits; and any toll-gate which has been or may hereafter be brought within such limits, or within eighty rods thereof, by means of the extension of such limits, or the creation of any incorporated village, shall be removed to some point on the road of the company not nearer such limits than above provided, but before such removal, compensation shall be made for the damages which the company will sustain by such removal, to be ascertained in the manner provided by law for the appropriation of property by municipal corporations; and the provisions of this section shall apply to suits pending, and to toll-gates hereafter [heretofore] erected.

No toll-gate to be erected within eighty rods of the limits of city and to be removed in case of extension of city or village.

SECTION 2. That said section thirty-four of the above recited act be and the same is hereby repealed.

SECTION 3. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed April 4, 1878.

[Substitute for House Bill No. 99.]

AN ACT

To prevent fraud in the sale of fertilizers.

Analysis of fertilizers to be attached to packages offered for sale.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That each and every person or persons, firm or house selling, or offering for sale, for use in this state, any fertilizer or fertilizers, such as [bone] dust, bone-flower, phosphate of lime, guano, ground land-plaster, or any other artificial fertilizer, shall be required to attach to the package containing the same a fair printed analysis of the same.

Written analysis to be furnished by professor of chemistry at agricultural college.

SECTION 2. It shall be the duty of the professor occupying the chair in the chemical and mechanical department of the Ohio agricultural and mechanical college, upon application, to make and give a written analysis of such artificial fertilizers as may be furnished to him for that purpose.

Penalties.

SECTION 3. That any person or persons violating the provisions of this act shall, on conviction of the same, be fined not less than twenty-five nor more than two hundred dollars, or be imprisoned in the county jail not more than thirty days for each offense.

SECTION 4. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed April 4, 1878.

[Senate Bill No. 57.]

AN ACT

To change the time for holding the second term of the court of common pleas in the counties of Mercer and Van Wert for the year 1878.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the time for holding the second term of the court of common pleas, in the county of Mercer, as fixed by the judges of the third judicial district, be and the same is hereby changed; and that said term be held on the third day

of June, A.D. 1878, instead of on the twenty-seventh (27) day of May, in said year, as fixed by said judges.

SECTION 2. That the time for holding the second term of the court of common pleas, in the county of Van Wert, as fixed by the judges of the third judicial district, be and the same is hereby changed; and that said term be held on the thirteenth (13) day of May, A.D. 1878, instead of on the 6th day of May, in said year, as fixed by said judges.

SECTION 3. That this act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed April 5, 1878.

[House Bill No. 309.]

AN ACT

To amend section one of the act of April 2, 1866 (63 v. 84, S. & S. 783), entitled "an act to authorize the erection, improving, enlarging or constructing additions to town halls, and to repeal an act therein named."

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That section one of the act of April 2, 1866 (63 v. 84, S. & S. 783), entitled "an act to authorize the erection, improving, enlarging, or constructing additions to town halls, and to repeal an act therein named," be amended so as to read as follows:

Voters of townships may vote for or against town hall.

Section 1. The voters of any township may, at any regular April or October election, decide by ballot for or against levying a tax on all the property subject to taxation therein, for the purpose of purchasing a site for and erecting a town hall, or for improving, enlarging, or constructing additions to a town hall already erected: provided, ten days previous notice shall be given by the township clerk, on the order of the township trustees, by posting up printed or written notices in three of the most public places in the township: and provided further, that the trustees may, if such vote result in favor of the tax, anticipate the collection thereof by borrowing money and issuing bonds therefor, bearing interest not exceeding seven per centum per annum, payable annually, for the amount proposed to be expended, or any part thereof, such bonds to be payable at times to suit the collection of taxes.

Notice.

Trustees may borrow money or issue bonds.

SECTION 2. Said original section one is hereby repealed; and this act shall take effect from its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed April 5, 1878.

[House Bill No. 44.]

AN ACT

To provide for the re-organization, government, and better regulation of Longview asylum, and to repeal certain acts therein named.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the hospital for the insane in the county of Hamilton shall be called Longview asylum, and shall be governed and conducted by a board of five directors, superintendent, assistant physicians, steward, and such additional assistants as may be hereinafter designated.

SECTION 2. The directors of said asylum shall be residents of Hamilton county, and shall be appointed as follows: two by the governor, upon the approval of the senate, one for the term of one year, and the other for the term of two years, and one by the judges of the court of common pleas of Hamilton county for the term of three years, and one by the judge of the probate court of Hamilton county for the term of four years, and one by the commissioners of Hamilton county for the term of five years: provided, that after the above named terms shall expire, their successors shall be appointed by the authorities hereinbefore mentioned, and they shall hold their offices for the term of five years, and until their successors are elected and qualified: provided further, that in case of a vacancy in said board by death, resignation, or otherwise, the authorities having appointed the member whose place has become vacant shall appoint another member for the unexpired term thereof.

Directors, how appointed—their terms.

Vacancy, how filled.

SECTION 3. The directors of said asylum shall, before entering upon the duties of their office, take an oath or affirmation to support the constitution of the United States, and the constitution and laws of the state of Ohio, and faithfully to discharge the duties required of them as such directors. They shall discharge such duties without compensation, except that they shall be paid for their loss of time and necessary expenses during the time they are actually engaged therein, such payment not to exceed the sum of two hundred and fifty dollars per annum, and to be made out of the county treasury on the allowance of the county commissioners, upon the warrant of the county auditor.

Oath of office.

To be allowed their necessary expenses.

To elect president and secretary, and appoint superintendent, steward, and assistant physician.

SECTION 4. That as soon as said directors are appointed, they shall meet and elect a president and secretary from among their own number, and shall appoint a superintendent for said asylum, and on the nomination of such superintendent the said board of directors shall appoint a steward, assistant physician, and such other assistants as may be necessary. And the salary and compensation of the before mentioned officers, and all others who may be employed in said asylum, shall remain as they now are: provided, that the said board of directors may, at any time, change and fix the salaries and compensation of the persons above named, subject to the approval of the commissioners of Hamilton county.

To visit asylum and approve accounts of steward.

SECTION 5 It shall be the duty of one or more of said directors to visit the asylum weekly, and all of them monthly, and shall monthly, with the superintendent, examine the accounts of the steward, and certify their approval, or otherwise, on the same page with his monthly balances.

To make record of their proceedings and make annual report to governor,

SECTION 6. The directors shall make a record of their proceedings at all meetings, in a book to be kept for that purpose, and at their annual meeting shall make a report to the governor of the condition and wants of the asylum, which shall be accompanied by a full and accurate report of the superintendent, and a detailed account of all the moneys received and paid out by the steward, and at the same time they shall transmit a copy of their report and the accompanying documents to the board of public works of the city of Cincinnati, and to the board of county commissioners of Hamilton county.

Annual meetings—when held, quorum, etc.

SECTION 7. The directors shall hold their annual meeting on the first Tuesday of November, in each year, at the asylum. Special meetings, for the appointment of resident officers, or for the transaction of general business, may be held in any convenient place, upon the written request of the president, or any two members of the board, which written request shall be made of each other director three days before the time appointed for such meetings, and shall also contain a statement of the object for which the meeting is called. Three members of the board shall constitute a quorum for the transaction of business, and no order, resolution, or appointment of the board shall be valid, unless concurred in by at least three members, and entered on the record.

Directors may remove officers.

SECTION 8. The said board of directors may, at pleasure, remove any of the resident officers of the institution, except the superintendent, and they may remove the superintendent also for gross neglect or refusal to discharge the duties devolving upon him, or for incompetency or misconduct, rendering it improper for him to remain longer at the head of the asylum, and may direct the discharge of a patient, upon the recommendation of the superintendent.

SECTION 9. Whenever there shall be any charges pre-

ferred against the superintendent, or any other resident officer of the institution, as aforesaid, the board of directors may immediately suspend the superintendent or officer against whom such charges are made, and appoint a committee from among their own number to investigate the same and report to the board at a subsequent meeting; and it shall be the duty of the officer so suspended, to immediately deliver up all books, papers, keys, and other property of the asylum in his possession, to any person designated by the board of directors, and the failure or refusal of the superintendent or any other officer to comply with such an order of the boardof directors, shall of itself and alone be sufficient cause for his removal from office.

May suspend officer when charges are preferred.

SECTION 10. No director, or any officer of the institution shall be either directly or indirectly interested in the purchase of any building material, or any article of furniture, provisions or other supply, for the use of said asylum.

No director or officer to be interested in purchases for asylum.

SECTION 11. No member of said board of directors shall be eligible to the office of superintendent of said asylum during the term for which he was appointed, nor within one year thereafter.

SECTION 12. The board of county commissioners, and their successors in office, shall have the power to receive and hold in trust, for the use and benefit of the asylum, any grant or devise of land, or any donation or bequest of money or personal property, to be applied to the maintenance and support of insane persons, or the general use of the asylum.

County commissioners may receive and hold in trust money and lands for benefit of asylum.

SECTION 13. The superintendent of said asylum shall be a physician of acknowledged skill and ability in his profession. He shall be the chief executive officer of the institution, and shall reside therein, and shall hold his office for the term of five years, unless sooner removed by the board of directors, as provided for in the eighth and ninth sections of this act. Before entering upon the duties of his office, he shall take an oath or affirmation faithfully and diligently to discharge the duties required of him by law. He shall have the entire control of the medical, moral, and dietetic treatment of the patients, and shall see that the other resident officers of the institution faithfully and diligently discharge their respective duties.

Superintendent—his qualifications, duties, etc.

SECTION 14. The assistant physicians shall be medical men of such character and qualifications as to be able to perform the medical duties of the superintendent.

Assistant physicians.

SECTION 15. The steward, under the direction of the superintendent, shall keep the accounts, pay those employed in and about the asylum, and have a personal superintendence of the farm, garden and grounds, and perform such duties as may be assigned him by the superintendent or board of directors; and (except sums received from the county treasury, on the warrant of the county auditor) the steward shall pay into the county treasury all moneys received by him, from whatsoever source derived, which sums

Duties of steward.

shall be credited by the treasurer of the county to the asylum fund.

Steward's bond.

SECTION 16. The steward shall execute a bond, with two sufficient sureties, to be approved by the directors, in the penal sum of five thousand dollars, conditioned that he will faithfully perform the duties of his office, and pay over and account for all money which may come into his hands as such steward.

His duties.

SECTION 17. The county auditor shall, from time to time, upon the order of a majority of the directors, issue a warrant upon the county treasurer for the payment of a sum not exceeding two thousand dollars, to meet current expenses. The steward shall keep an accurate account, in detail, in a proper book, always open to the inspection of the directors and superintendent, of all expenses and sums paid out of the money so advanced by the treasurer, and shall settle the same with the superintendent and directors monthly, or oftener, if required, and upon such settlement shall account for all money received by him, a copy of which shall be filed with said auditor before another warrant is issued.

Qualifications of admission.

SECTION 18. The asylum shall be open to the admission of all insane persons over the age of seven years, having a legal settlement in the county of Hamilton: provided, that no person shall be entitled to admission except persons whose insanity has incurred after such persons have acquired a legal settlement: provided, that all patients who may be confined in said asylum at the time of the passage of this act non-residents of the county, except the colored insane of this state, shall be removed from said asylum.

Inmates to be maintained at expense of county.

SECTION 19. All inmates of said asylum shall be maintained therein at the expense of the county; but it shall be the duty of the superintendent to enter in a book kept for that purpose, the names of all patients whose friends desire to contribute to all or any part of his or her expenses; and on the first Mondays of each month shall make out a bill against such patient for the amount due the asylum to date, and shall present the same to the steward, who shall collect and place such sums of money so collected to the credit of the asylum, in the county treasury.

Proceedings to obtain admission.

SECTION 20. For the admission of inmates into said asylum the following proceedings shall be had, viz: Some resident citizen of Hamilton county shall file with the probate judge of said county an affidavit, substantially as follows:

The state of Ohio, Hamilton county, ss:

The undersigned, a citizen of Hamilton county, Ohio, being sworn, says that he believes ——— ——— to be insane, and a fit subject for the lunatic asylum. He is a resident of Hamilton county, has a legal settlement in ——— township. These facts are known by ——— ——— and ——— ———, (naming at least two persons).

SECTION 21. When the affidavit aforesaid shall be filed

Affidavit, warrant, etc.

the probate judge shall forthwith issue his warrant to the sheriff or some suitable person, commanding him to bring the person alleged to be insane before him on a day in such warrant named, which shall not be more than five days after the affidavit shall have been filed, and shall immediately issue subpœnas to such witnesses as shall be named in affidavit, and a physician to be designated by the superintendent of the asylum, commanding the persons in such subpœnas named to appear before said judge on the return day of the warrant; and if any person shall dispute the insanity of the party so charged, the said judge shall issue subpœnas for such persons as may be demanded on his or her behalf.

Examination, etc.

SECTION 22. At the time appointed (unless for good cause the investigation shall be adjourned), the judge shall proceed to examine the witnesses in attendance, and if upon the hearing of the testimony such judge shall be satisfied that the person so charged is insane, and is included in the class enumerated in section eighteen of this act, he shall cause a certificate to be made out by said physician, setting forth the name, age, and residence of the patient, with a concise history of the case, medical treatment pursued, supposed cause of the disease, and such other information as may be useful.

SECTION 23. The probate judge, upon receiving certificate aforesaid, shall forthwith transmit a copy thereof, and his finding in the case, under his official seal, to some suitable person (giving the relatives of such insane person the preference), who shall immediately take charge of and convey such patient to the asylum, and return therefor, to the probate judge, a receipt of the superintendent, to be filed with the other papers in the case.

Proceedings where discharged patient again becomes insane.

SECTION 24. When any patient, discharged from said asylum as cured, shall again become insane, and any respectable physician shall file with the probate judge of the county an affidavit setting forth the fact of such recurrence of insanity, and such other facts in relation thereto as he may deem proper, the probate judge shall forthwith transmit a copy of such affidavit, authenticated by his official seal, to the superintendent of the asylum, who shall thereupon convey such patient to the asylum.

Proceedings for discharge of inmate.

SECTION 25. Any inmate of said institution may at any time be discharged therefrom by the superintendent with the consent of the directors. And whenever any insane person of said asylum shall become cured, it shall be the duty of the superintendent to discharge him or her forthwith; and the superintendent may furnish him or her suitable clothing and a sum of money not exceeding ten dollars, if deemed necessary. When pauper idiots, and harmless, incurable insane persons shall be discharged, the superintendent shall issue his warrant to some suitable person, which warrant shall be substantially as follows:

Form of warrant.

The state of Ohio, Hamilton county, ss:

The proper authority having directed the discharge of A. B., an inmate of Longview asylum, you are hereby commanded to remove said inmate to the county infirmary.

Witness my hand and official seal this —— day of ———, A.D. ——. A. B., superintendent.

Upon the receipt of such warrant, it shall be the duty of the person to whom it is directed to forthwith execute the same, and it shall be the duty of the superintendent of the county infirmary to receive such inmates. And should any of such persons so sent to the county infirmary become unmanageable, the superintendent of said infirmary may return the same to Longview asylum, upon the approval of the board of directors of said infirmary; and the cost of maintaining such persons in the county infirmary shall be paid out of the asylum fund, and shall not exceed the average cost of maintaining the inmates of said infirmary.

Papers in case of inquest to be preserved.

SECTION 26. In each case of inquests held under the provisions of this act, the probate judge shall file and carefully preserve all papers relating to the case, and shall make such entries as will, together with the papers filed aforesaid, preserve a complete record thereof.

Inmate escaping to be returned.

SECTION 27. If any inmate shall escape from the asylum, it shall be the duty of the superintendent to forthwith cause him or her to be arrested and returned; and if any inmate shall die, it shall be the duty of the superintendent to notify the relatives of such deceased person, if known to him.

Action for debts due asylum.

SECTION 28. For all debts due said asylum, an action shall be maintained in the name of the county of Hamilton; and all moneys due said asylum shall, upon the warrant of the county auditor, be paid into the county treasury, for the use of said asylum.

Prosecuting attorney to attend suits.

SECTION 29. The prosecuting attorney of Hamilton county shall attend to all suits instituted in behalf of said asylum, and shall be entitled to five per cent. on all sums collected by him, as compensation therefor.

Official seal of asylum.

SECTION 30. The superintendent of the asylum shall provide an official seal for such asylum, upon which shall be the words "Longview asylum, state of Ohio," and the impression of such seal to a certificate, order, or account, to which the name of the superintendent is annexed, shall be prima facie evidence that such name is the handwriting and proper signature of the superintendent.

Costs and expenses, how paid.

SECTION 31. The taxable costs and expenses to be paid under the provisions of this act shall be as follows:

To the probate judge, for filing affidavit and holding inquest, under the provisions of this act, the sum of two dollars.

To the person making out certificate, as required by section twenty of this act, two dollars, and witness fees as are allowed by law in other cases.

To witnesses, constables, and sheriffs the same fees as are allowed by law for like services in other cases.

Penalties.

SECTION 32. If the probate judge, or any other person charged with duties under this act, shall neglect or refuse to discharge any such duties, he shall forfeit a sum not exceeding fifty dollars, to be recovered for the use and benefit of the asylum, in a civil action, conducted in the name of the county of Hamilton, as in case of a debt due the asylum, or may be removed from his office in the same manner as for any other neglect of duty.

Asylum, how to be supported.

SECTION 33. The asylum shall be supported, and salaries of its officers paid, from a fund consisting of all such moneys as now are, or hereafter may, come into the treasury of the county, from whatever sources, applicable to the support of insane persons in said county, and of such appropriations as shall be made by the state for the support of said asylum, which appropriations shall bear the same proportion to the appropriations for the other lunatic asylums of the state as the population of Hamilton county bears to the population of the state exclusive of Hamilton county, as ascertained by the federal census immediately preceding the making of such appropriations.

County commissioners may levy tax.

SECTION 34. To aid in the support of said institution, the county commissioners of Hamilton county are hereby authorized to levy a tax, not exceeding three-tenths of one mill on the dollar, upon the taxable property of Hamilton county.

SECTION 35. Provided, nothing in this act shall be construed as to prevent the county commissioners from placing in this asylum all insane persons for whom by law the county is required to provide.

Repeal.

SECTION 36. The act passed February 27, 1861, entitled "an act to further provide for the government of the Longview asylum, and amendatory and supplementary to an act entitled an act to constitute the county of Hamilton a separate district for lunatic asylum purposes, and to provide for the erection and government of an asylum therein;" also, the act passed April 5, 1866, entitled "an act to provide for the government of Longview asylum, and to amend the acts amendatory and supplementary thereto," passed February 27, 1861, passed April 11, 1865, are hereby repealed; also, the act passed April 16, 1867, entitled "an act to amend an act entitled an act further to provide for the government of the Longview asylum, and amendatory and supplementary to an act entitled an act to constitute the county of Hamilton a separate district for lunatic asylum purposes, and to provide for the erection and government of an asylum therein," passed February 27, 1861, also the act passed April 28, 1873, entitled an "act to amend section thirty-three of an act entitled an act further to provide for the government of the Longview asylum, and amendatory and supplementary to an act entitled an act to constitute the county of Hamilton a separate district for lunatic asylum purposes, and to provide for the erection and government of an asylum therein," passed and

took effect February 27, 1861, are hereby repealed; also, all acts or parts of acts, that may be inconsistent with this, are hereby repealed.

SECTION 37. This act shall take effect from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed April 5, 1878.

[House Bill No. 373.]

AN ACT.

To amend section seven (7) of an act to provide for the election of township assessors, and to prescribe their duties, passed and took effect April 4, 1859, amended February 24, 1862, as further amended March 13, 1865. (O. L., vol. 62, p. 41; S. & S., p. 19.)

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That section seven (7) of an act to provide for the election of township assessors, and to prescribe their duties, passed and took effect April 4, 1859, as amended March 13, 1865, be so amended as to read as follows:

Compensation of assessors, and how paid.

Section 7. Assessors shall be paid, out of the county treasury, two dollars per day for the time during which they shall be necessarily engaged in the performance of their duties. Each assessor shall make out an account in detail, giving the date of each day in which he shall have been thus engaged, and shall verify the same by oath, which the county auditor is hereby authorized to administer; and if the auditor shall be satisfied that such account is correct, he shall draw his warrant on the county treasurer for the amount thereof, but in no case shall such order be drawn until the assessor shall have filed with the auditor his list of assessments, accurately made out, and upon the statements returned to him, and the books on which the original assessments were made.

SECTION 2. That the act of March 13, 1865 (O. L., vol. 62, p. 41; S. & S., p. 19), be and the same is hereby repealed.

SECTION 3. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed April 6, 1878.

[House Bill No. 278.]

AN ACT

To change the time of holding the September term of the court of common pleas in Franklin county, in the year 1878.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the September term of the court of common pleas, in Franklin county, for the year 1878, shall commence on the sixteenth day of September, 1878, at the hour of nine o'clock a. m. of said day, instead of on the eighth day of September, 1878, as fixed by the order of the judges of the fifth judicial district of this state: provided, however, that nothing herein contained shall be construed to interfere, in any manner, with the time or times fixed for holding any other term or terms of court mentioned in said order.

SECTION 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed April 6, 1878.

[House Bill No. 206.]

AN ACT

To authorize boards of education in certain cities to appoint library committees, and levy tax for school purposes.

Board of education in certain cities to appoint library committees.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That in all cities which on the 1st day of March, 1877, had, and those which hereafter on the first day of March in any year, have, according to the official report of the next preceding federal census, more than ninety, and less than two hundred thousand inhabitants, the board of education in such cities shall, at their first regular meeting after the second Monday in April of 1878, and every two years thereafter, elect, by ballot, not less than three, nor more than seven, suitable persons, residents of such cities, but other than the members of such board, who shall be known as the library committee of such city, and shall hold office for the period of two years from such election, or till their successors are elected, but such committee shall serve without compensation.

Said committee to have control of school library, appoint librarian, etc.

SECTION 2. Such committee shall report in writing to such board at least once each year, and oftener if required by such board, and shall have entire charge and control of the school library in such city; and shall have full power to make all rules and regulations for the government and regulation of such library, to employ a librarian and such assist-

ants and help as may be needed for the care and protection of such library, and to attend to the drawing and return of books: provided, however that the salary of such librarian, and rate of compensation of such assistants and help, shall be fixed by the board of education, by resolution, prior to such employment.

Moneys appropriated for books, etc., to be expended by library committee.

SECTION 3. All money appropriated for such library shall be expended under the direction of said library committee, for the purchase of such books, pamphlets, magazines, periodicals, and journals as are suitable to the public school libraries, the bills for which, with the attendant expenses, and for the payment of all the costs and expenses of maintaining said library, including the salary of librarian and assistants, the bills and pay-rolls for which shall be certified, upon the order of the library committee, by the chairman of such committee and the secretary of the board of education, and paid by the treasurer of said board.

Board of education to determine amount necessary for prolonging schools, etc.

SECTION 4. In all cities mentioned in section one of this act, the board of education, at a regular or special meeting, held between the third Monday in April and the first Monday in June of each year, shall determine, by estimate, as nearly as practicable, the entire amount of money necessary as a contingent fund to be extended [expended] for prolonging the several schools of the district, for the purchase of suitable sites for school houses, for leasing, purchasing, erecting, and furnishing school houses, and for all other school expenses, not exceeding four and one-fourth ($4\frac{1}{4}$) mills on the dollar of the taxable property of the district.

SECTION 5. The act entitled "An act to authorize boards of education in certain cities to constitute standing committees for the management of libraries under their control," passed and took effect April 3d, 1867, (64 v. 100), and the act entitled "an act to amend section fifty-six of an act entitled an act for the reorganization and maintenance of common schools," passed and took effect May 1st, 1873, (O. L., vol. 70, page 211), as passed April 21, 1877, in so far as such acts give authority to cities mentioned in section one of this act to levy tax for any purpose, be and the same are hereby repealed.

JAMES E NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed April 8, 1878.

[House Bill No. 67.]

AN ACT

To reduce fees and salaries of county officers.

Compensation of county officers in certain county (Columbiana.)

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That in counties having a population of thirty-eight thousand, two hundred and ninety-nine (38,299) at last federal census, the fees and salaries of probate judge, clerk of court, prosecuting attorney, sheriff, auditor, treasurer, and recorder, shall be reduced as follows, to wit:

The probate judge shall, before collecting any fee or fees now allowed by law, deduct therefrom thirty per cent., and the remainder shall be his compensation.

The clerk of court shall deduct from the fees now allowed him by law, twenty per cent., and the remainder shall be his compensation.

The prosecuting attorney, before collecting any fees now allowed him by law, shall deduct therefrom twenty per cent., and the remainder shall be his compensation.

The sheriff, before collecting any fees now allowed him by law, shall deduct therefrom ten per cent., and the remainder shall be his compensation.

The auditor shall, before collecting fees now allowed him by law, deduct therefrom thirty per cent., and the remainder shall be his compensation.

The treasurer shall deduct from fees and percentage now allowed by law and paid out of the county treasury thirty per cent., and the remainder shall be his compensation.

The recorder shall deduct twenty per cent. from the fees now allowed by law, and the remainder shall be his compensation.

SECTION 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed April 8, 1878.

[Senate Bill No. 68.]

AN ACT

Relative to indexing pending suits, and executions not dormant.

In certain counties indexes of court records to be made.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the clerks of the several courts of common pleas, district courts, and superior courts of this state, in counties containing a population of thirty thousand and over (by the last federal census), may make an alphabetical index of the names of all plaintiffs and defendants to pend-

ing suits, showing thereon, in separate columns, the names, and the number of the suit on the appearance docket, and when there is more than one suit pending for or against the same party, it shall be sufficient to index the name but once, and make entries opposite thereto of the number of the suit.

Indexes of judgments not dormant to be prepared.

SECTION 2. That such clerks may make an alphabetical index, containing the names of all plaintiffs and defendants to judgments not dormant, in which an execution has been issued, and also of all transcripts of judgments of justices of the peace filed for lien and execution not dormant, as aforesaid, showing thereon, in separate columns, the names, the number of the execution, and the number of the case on the appearance docket, and when there is more than one execution for or against the same party, it shall be sufficient to index the name but once, and make entries opposite thereto of the number of the execution, and the number of the case on the appearance docket.

Said indexes to be made every three years.

SECTION 3. That indexes, as provided for by sections one and two of this act, shall be made every three years, commencing on the first day of July, A.D. 1878.

Compensation of clerks.

SECTION 4. The clerks shall receive the same fee for making such indexes as is now provided by law for making indexes to judgments.

SECTION 5. That an act entitled "an act to authorize the making of indexes to civil actions pending," passed and took effect February 1, 1866 (S. & S. 658), and an act entitled "an act to provide for indexing certain executions in certain counties of this state," passed and took effect April 8, 1867 (S. & S., 659), be and the same are hereby repealed.

SECTION 6. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed April 9, 1878.

[Senate Bill No. 53.]

AN ACT

To provide for the cleaning and control of streets in cities of the first class having a population of more than two hundred thousand, and to repeal an act therein named. (O. L., vol. 74, p. 105.)

Board of public works in certain cities to supervise cleaning of streets.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That in all cities of the first class having a population of more than two hundred thousand, the board of public works shall be and they are hereby authorized and required to supervise the cleaning of the streets, alleys, avenues, lanes, public wharves, and buildings, market-houses

and spaces, bridges, sewers, drains, ditches, culverts, ship channels, streams and water-courses of the corporation, under the control of the council of the city: provided, nevertheless, the board may at any time, when in their judgment the best interests of the city will be subserved, advertise for proposals for cleaning the same, and may renew any contract with any person or persons having existing contracts for their use and occupancy. Whenever the board determines to contract for such cleaning they shall advertise for sealed proposals to perform the work in some newspaper of general circulation within said city or cities for a period of ten days, and shall contract with the lowest responsible bidder to perform said contract; and for the faithful performance of the same may demand such security as in their judgment they may deem proper, or may reject any or all such proposals or bids at their discretion.

May advertise for proposals for cleaning same.

SECTION 2. That the act entitled "an act to provide for the cleaning of sewers, catch-basins, avenues, streets, alleys, market-places, wharves, etc., in cities of the first class having a population of more than one hundred and fifty thousand at the last federal census," passed April 21, 1877, be and the same is hereby repealed.

SECTION 3. This act shall take effect and be in force from and after the date of its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed April 9, 1878.

[House Bill No. 282.]

AN ACT

To compel owners of hedge fences on partition lines, and along public highways to keep the same within certain limits.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That it shall be unlawful for the owner or owners of any hedge fence on a partition line or along a public highway to permit said fence to remain of a greater height than six feet, or of a greater width than six feet, for a longer period than six months or leave the cuttings from the same on the public highway for a greater length of time than ten days.

Unlawful for owner to permit hedge fence to remain at greater height than six feet for longer period than six months.

SECTION 2. Any person or persons who shall violate the first section of this act shall be liable to the person damaged in any sum not exceeding twenty cents per rod of such hedge fence; and if the hedge be along a public highway, he or

Penalty for violation.

they shall be liable to the township trustees of the township in which such hedge is located, in any sum not exceeding fifteen cents per rod of such fence: provided, however, before judgment is rendered it shall appear by affidavit that the party or parties complained against shall have had at least twenty days' notice before suit is begun, from the party complaining that such hedge is unlawful and that unless cut to a proper height within twenty days, suit will be commenced for such violation of law.

Party complained of must have notice before judgment.

Actions to be upon complaint of damaged party, and fines to be paid into township treasury, to credit of road fund

SECTION 3. All actions under this act shall be brought upon complaint of the person damaged before any justice of the peace in the township where the hedge is located, or if the hedge be along a public highway, the complaint shall be made by the supervisor of the road in whose district the hedge may be. All fines assessed against any person for a violation of the act as regards highways, shall be paid into the township treasury, and be credited to the road fund.

SECTION 4. This act shall be in force from its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed April 9, 1878.

[House Bill No. 97.]

AN ACT

To amend an act entitled "an act supplementary to 'an act to provide for the better regulation of turnpike and plank-road companies, and to repeal section forty-one of an act to provide for the regulation of incorporated companies, passed May 1, 1852, and repealed March 30, 1864, and re-enacted April 5, 1866,' passed March 11, 1867," passed April 3, 1868.

SECTION 1. *Be it enacted by the General Assemby of the State of Ohio*, That section one of the act passed April 3, 1868, entitled "an act supplementary to 'an act to provide for the better regulation of turnpike and plank-road companies, and to repeal section forty-one of an act to provide for the regulation of incorporated companies, passed May 1, 1852, and repealed March 30, 1864, and re-enacted April 5, 1866,' passed March 11, 1867," be so amended as to read as follows:

Complaint when plank-road not kept in repair may be filed before justice of the peace.

Section 1. That if any plank-road company shall fail to keep its roads in repair, for five days successively, any person may file a complaint, in writing, before any justice of the county, setting forth the nature and extent of the defect complained of, designating the place or places in the road where it exists; and it shall be the duty of said justice, upon at least three days' notice, to be given to the gate-keeper

nearest the place complained of, to appoint two disinterested persons as inspectors, to meet at the place complained of, within five days, and of the time and place of which meeting reasonable notice shall be given to said gate-keeper; and the inspectors shall then examine into the truth of the matter complained of, and if they shall find the complaint to be true, they shall file with the said justice a report, in writing, of their finding, and shall send a certified copy of the complaint, and of their finding thereon, to the keeper of each of the gates between which such defective place shall be, and thereafter no toll shall be received at such gates for the intermediate distance, until the parts of the road found defective by said inspectors shall be fully repaired; or an appeal be taken as hereinafter provided, and if the keeper of such gate shall demand and receive toll contrary to the provisions of this act, he shall be liable to pay the sum of five dollars to the party injured, to be recovered by action of debt before any justice of the peace having jurisdiction; and the company, moreover, shall be liable to any person injured, for the damages sustained by reason of such road being suffered to remain out of repair by the neglect of the company. Said justice shall record said complaint, and the report of said inspectors; and the inspectors and justice of the peace shall be entitled to receive one dollar per day for their services, which shall be paid by the company, if the complaint be sustained, and if it fail, then by the complainant; and to the amount so taxed, shall be added the expense of sending the notice to the gate-keepers, as required by this act, which shall be paid as aforesaid, and for which the justice shall render judgment against the party liable for the payment thereof; and in case the sum necessary to make said repairs shall exceed twenty dollars, said company may appeal said proceeding, and from said report and judgment as to costs, to the court of common pleas of the county, on filing affidavit as to cost of repair and giving bail, as in other cases of appeal, within ten days after the services of such certified copy of the report of said inspectors. The condition of such appeal bond shall be to abide by and perform the order of said court of common pleas; and the court of common pleas shall hear and determine as to the truth of said complaint and report, and shall make such order as to the collection of tolls while said proceeding is pending, as the court may deem just; and if upon the final hearing the court shall find the complaint and report true, in whole or in part, the court shall make such order as to such repairs, and as to the collection of tolls, as the court may deem just under the foregoing provisions.

Justice to appoint inspectors to examine complaint.

If inspectors find complaint true, finding to be filed with gate-keeper and no toll to be collected.

Justice to record complaint.

Compensation of justice and inspectors.

Appeal may be taken to court of common pleas.

Proceedings on appeal.

SECTION 2. Said original section one of the above recited act, is hereby repealed.

SECTION 3. This act to take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed April 9, 1878.

[Substitute for House Bill No. 140.]

AN ACT

To amend section thirty-five of chapter eight of an act, entitled "an act to amend, revise, and consolidate the statutes relating to crimes and offenses, and repeal certain acts therein named, to be known as title one, crimes and offenses, part four, of the act to revise and consolidate the general statutes of Ohio." (O. L., vol. 74, page 273.)

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That section thirty-five, of chapter eight, of an act entitled "an act to amend, revise, and consolidate the statutes relating to crimes and offenses, and repeal certain acts therein named; to be known as title one, crimes and offenses, part four, of the act to revise and consolidate the general statutes of Ohio," be so amended as to read as follows:

Penalty prescribed for catching fish except with hook and line.

SECTION 35. Whoever, in any of the waters of any creek, river, canal, lake, pond, or reservoir, or in any body of water, whether artificial or natural, lying within the state of Ohio, except the waters of Lake Erie, injures, or kills, or catches, in any other way than by hook and line, any fish, except minnows, or owns or possesses any fish pond, fish net, fish trap, or fish sein, except seins to catch minnows, in or connected with any of the waters in the state of Ohio, except the waters of Lake Erie, or in any way maliciously disturbs any fish in any private fish pond, shall be fined for each offense, not more than fifty dollars, nor less than ten dollars, or be imprisoned in the jail of the county not less than ten days, nor more than sixty days. And provided further, that it shall be unlawful to catch or destroy fish in any manner during the spawning season, excepting reservoirs containing one thousand acres or more, from the first day of May to the fifteenth day of June in each year, with the same penalties for a violation of this provision as above provided in other cases.

Unlawful to catch fish during spawning season, from May first to June fifteenth. Penalty.

SECTION 2. That said section thirty-five of the above recited act be and the same is hereby repealed.

SECTION 3. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed April 10, 1878.

[House Bill No. 400.]

AN ACT

To authorize a temporarary loan for street-cleaning purposes in certain cities of the first class.

WHEREAS, The levy of taxes for the current year, for street-cleaning purpeses, in certain cities of the first-class, having more than two hundred thousand inhabitants, is insufficient to furnish the funds necessary to pay for the cleaning of the streets of such city; and,

WHEREAS, On account of the exhaustion of the street-cleaning fund of such city, and for the purpose of protecting the health of the people thereof, certain indebtednes has been unavoidably incurred in an [and] about cleaning the streets; therefore,

Certain city (Cincinnati) authorized to borrow money for street cleaning purposes.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That in all cities of the first-class, having more than two hundred thousand inhabitants, the board of public works thereof are hereby authorized to borrow on the faith and credit of such city, a sum of money, not to exceed seventy-five thousand thousand dollars, at a rate of interest not to exceed seven per centum per annum, and to issue the obligations of the city therefor, the same to be repaid in seven annual installments, of ten thousand dollars each, with interest on such installments, payable semi-annually; and the council shall make provision for the repayment of the principal and interest of such loan out of the general revenues of the city, without the levy of any additional tax for such purpose.

Proceeds of loan, how applied.

SECTION 2. The proceeds of such loan shall be applied by said board, as follows: Not more than twenty thousand dollars thereof to the payment of any indebtedness heretofore incurred for cleaning the streets of such city, during the years 1877 and 1878, and the remainder shall be paid into the city treasury to the credit of the street-cleaning fund to

be expended for no other purpose than the cleaning of the streets, sewers, and catch-basins of such city.

SECTION 3. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed April 16, 1878.

[House Bill No. 340.]

AN ACT

Relating to incorporated villages which, by the federal census of 1870, had, and which, by any subsequent federal census, may have a population of one thousand and eighty-seven.

Certain villages authorized to borrow money and build a railroad.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That whenever in any incorporated village which, by the federal census of 1870, had, and which, by any subsequent federal census, may have a population of one thousand and eighty-seven, the village council thereof shall, by a resolution passed by a majority of the members elected thereto, declare it to be essential to the interests of such village that a line of railway, to be named in said resolution, should be provided between termini designated therein, one of which shall be such village, and the other not exceeding two and one-half miles therefrom; it shall be lawful for a board of trustees, appointed as herein provided, and they are hereby authorized to borrow as a fund for that purpose, not to exceed the sum of twelve thousand dollars, and to issue bonds therefor in the name of such incorporated village under the corporate seal thereof, bearing interest at a rate not to exceed seven per centum per annum, payable semi-annually, said bonds to be payable at such times and places and in such sums as shall be deemed best by said board. Said bonds shall be signed by the president of said board, and attested by the clerk of such incorporated village, who shall keep a register of the same, and they shall be secured by a mortgage on the line of railway and by the pledge of the faith of such village, and a tax which it shall be the duty of the council thereof annually to levy (which tax shall not exceed five mills on the dollar in any one year), to pay the interest, and provide a sinking fund for the final redemption of said bonds: provided, that such village shall not in any one year levy taxes to a greater amount than twelve mills on the dollar, including the levy for said bonds; and, provided, that no money shall be borrowed on bonds issued until after the question of providing the line of railway

specified in said resolution shall be submitted to a vote of the qualified electors of such incorporated village, at a special election to be ordered by the village council thereof, of which not less than twenty days' notice shall be given in the papers published in such village; and, further provided, that three-fifths of said electors voting at such election shall decide in favor of said line of railway. The returns of said election shall be made to the clerk of said incorporated village, and be by him laid before the village council, who shall declare the result by resolution. The bonds issued under the authority of this section shall not be sold or disposed of for less than their par value.

Question to be submitted to vote of electors.

SECTION 2. If a majority of the votes cast at said election shall be in favor of providing the line of railway as specified in the first section, it shall be the duty of the corporate solicitor forthwith to file a petition in the court of common pleas in the county in which such village is situated praying that the judge thereof will appoint five trustees, who shall be electors and freeholders of said village, to be called the trustees of ——— railway (the blank to be filled with the name of the railway as given in the resolution), and it shall be the duty of said judge to make the appointment and enter the same on the minutes or journal of the court. They shall enter into bond to the village in such sum as the court may direct, with one or more sufficient sureties to be approved by the court, conditioned for the faithful discharge of their duties. The bond so taken shall be approved by the corporation solicitor, and deposited with the treasurer of the corporation for safe-keeping.

Trustees of railroad to be appointed by judge of common pleas court.

Trustees to give bond.

SECTION 3. The said trustees and their successors shall be the trustees of said fund, and shall have the control and disbursement of the same. They shall expend said fund in procuring the right to construct, and in constructing a single track railway, with all the usual appendages, and, if deemed necessary, a line of telegraph between the termini specified in said resolution, and, for the purposes aforesaid, shall have the power and capacity to make contracts, appoint, employ, and pay officers and agents, and to acquire, hold, and possess all the necessary real and personal property and franchises. They shall also have power to receive donations of land, money, bonds, and other personal property, and to dispose of the same in aid of said fund.

Duties of trustees.

SECTION 4. The said trustees shall form a board, and shall choose one of their number president, who shall also be the acting trustee, with such power as the board may, by resolution, from time to time, confer upon him. A majority of said trustees shall constitute a quorum, and shall hold regular meetings for the transaction of business at their office in the village under whose action they are appointed, but they may adjourn, from time to time, to meet at any place they may think proper. They shall keep a record of their proceedings, and cause to be kept a full and accurate account of

Trustees to organize as a board, keep record of proceedings, etc.

their disbursements, and make a report of the same to the corporation clerk, whenever requested so to do by a resolution of the village council. No money shall be drawn from said fund but upon the order of said board, except their own compensation, which shall be paid out of the same, upon the recommendation of the council of such village by resolution duly adopted and allowed by the court appointing them.

SECTION 5. Said trustees shall have power to take such security from any officer, agent, or contractor chosen or appointed or employed by them as they shall deem advisable. They shall not become surety for any such officer, agent, or contractor, or be interested, directly or indirectly, in any contract concerning said railway. They shall be responsible only for their own acts.

Trustee may be removed by court of common pleas; proceedings, etc.

SECTION 6. Whenever the corporation solicitor of any village under whose action a board of trustees have been appointed, as herein provided, shall have reason to believe that any one of said trustees has failed in the faithful performance of his trust, it shall be his duty to apply to the court that appointed said trustee, by petition, praying that such trustee be removed, and another appointed in his place; and when a vacancy shall occur in said board from any other cause, it shall be filled in like manner. If the corporation solicitor shall fail to make application in either of the foregoing cases after request of any of the holders of the bonds issued by said trustees, or by a tax payer of such village, such bondholder or tax payer may file a petition in his own name, on behalf of the holders of such bonds, for like relief, in any court having jurisdiction; and if the court hearing the action shall adjudge in favor of the plaintiff, he shall be allowed as part of his costs a reasonable compensation to his attorney.

Lands may be appropriated for line of railway; proceedings.

SECTION 7. Whenever in the construction of a line of railway, as herein provided, it shall be necessary to appropriate land for the foundation of the abutments or pier of any bridge across any stream, or for any other purpose, or to appropriate any rights or franchises, proceedings shall be commenced and conducted in accordance with the laws in force at the time for the appropriation of such private property for the use of corporations, except that the oath and verdict of the jury, and judgment of the court, shall be so varied as to suit the case.

Trustees may purchase or lease line of railway partially constructed.

SECTION 8. Whenever there shall be between the termini designated in any resolution passed under this act, a railroad already partially constructed, or rights of way acquired therefor, which can be adopted as part of the line provided for in said resolution, the trustees of said line may purchase or lease the said railroad, or right of way, and pay for the same out of the trust fund.

May occupy streets or alleys, etc.

SECTION 9. Whenever, in the construction of a line of railway, as herein provided, the said board of trustees shall find it necessary to use, or occupy, any street, alley, or other public way, space or ground, or any part thereof belonging

to such incorporated village, proceedings shall be commenced and conducted in accordance with the laws in force at the time for the appropriation of such rights or easements by street railway corporations, except that the oath and verdict of the jury, and the judgment of the court, shall be so varied as to suit the case.

May lease road when constructed.

SECTION 10. On the final completion of any line of railway constructed under the provisions of this act, the board of trustees shall have power to lease the same to any person or persons, or company, as will conform to the terms and conditions, which shall be fixed and provided by the council of the incorporated village by which the line of railway is owned.

Village council may advance funds.

SECTION 11. That the village council of any incorporated village described in this act may, after trustees have been appointed, as provided in this act, advance to said trustees, out of any funds of said village, such sum as is necessary, not exceeding five hundred dollars, for carrying the object for which they were appointed into effect, and said sum shall be repaid out of the trust fund provided for in this act, when raised.

Deeds, contracts, etc., how made.

SECTION 12. Deeds and contracts may be made, and proceedings for appropriations and actions may be commenced, either in the name of such incorporated village providing the line of railway, or in the name of the trustees of ——— railway (filling the blank with the name given to the railway in the resolution), and said proceedings may be commenced and conducted, either in the court of common pleas or probate court, as in other cases of appropriations for the use of municipal corporations.

SECTION 13. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
Passed April 16, 1878. *President pro tem. of the Senate.*

[Senate Bill No. 90.]

AN ACT

To authorize the sale of railroads in certain cases.

City of first-class owning a railroad may sell and convey same.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That any city of the first-class being the owner of a railroad which is situated wholly within the state, said railroad having been constructed under authority given by law, is hereby authorized to sell, and by proper deed or deeds of conveyance, convey to any person or corporation, said entire railroad and all the right, title, and interest of such city in and to said railroad, and all its appurtenances and franchises, upon such terms and conditions as the common council of such city may by ordinance or resolution duly passed or

adopted agree and consent to; said deed or deeds of conveyance to be executed by the proper officer of such city, or by the persons in whom may be vested the title to said railroad, or by the successors or survivors of such persons; which deed or deeds of conveyance, when executed and delivered as aforesaid, shall completely divest said city of all right, title, interest, claim, or demand in or to said railroad, or any part thereof, and vest the same absolutely, in the person or corporation purchasing the same; and the person or corporation purchasing said railroad is hereby authorized to take, hold, operate, and maintain, and to lease, mortgage, sell, or otherwise dispose of the same, or any part thereof, as may be done with other railroad property in the state of Ohio; provided such sale shall be made at public auction and to the highest bidder, after advertisement for not less than sixty days in at least two daily newspapers published in said city; and such sale shall not be made at a price less than fifty per centum of the amount paid by such city for the construction of said railroad.

Purchaser authorized to take, hold, operate, lease, mortgage, sell, or otherwise dispose of same.

Purchase money to be applied to pay bonds of city.

SECTION 2. That the purchase money received for such railroad and property shall be applied in payment of the bonds of such city, chargeable to its general fund, and not otherwise.

SECTION 3. That all acts or parts of acts inconsistent herewith, or in any manner limiting or restricting such cities from selling such railroad and appurtenances, be and the same are hereby repealed.

SECTION 4. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
Passed April 17, 1878. *President pro tem. of the Senate.*

[House Bill No. 218.]

AN ACT

Providing for the payment of the cost of building levees to protect lands from overflow in certain cases.

WHEREAS, the act of the general assembly of the state of Ohio, entitled "an act authorizing the building and repairing of levees to protect lands from overflow," passed April 30, 1869, and the act amendatory thereof, passed May 2, 1877, have been determined by the supreme court of Ohio, to be in contravention of section nineteen of the bill of rights in the constitution of this state, and that all assessments made for payment of work and labor done and expended under said acts in constructing such levees by parties to whom contracts have been awarded in accordance with the provisions thereof, are also void and unenforceable against the lands upon which the same were made; and

WHEREAS, said levees so constructed were and are now well executed and lasting structures, and conducive to the health, convenience, and welfare of the citizens of the counties wherein situate, and to the public benefit and interest, which are now receiving the benefit thereof, while the builders thereof have never been paid therefor, and are unable to collect any remuneration for their labor performed and materials used in the construction thereof; now, therefore,

County commissioners of certain county to pay balance due for constructing levees.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the board of county commissioners of any county in this state having at the federal census of eighteen hundred and seventy a population of sixty-three thousand and nineteen and no more, and wherein there shall have been constructed heretofore a levee or levees along any stream or water-course, within said county, for the protection of lands from overflow, under the order of the probate judge of said county, granted and made under proceedings before him instituted for the purpose of procuring said order under the said acts of the general assembly of the state of Ohio, mentioned in the preamble of this act, and the cost and expense of the same or any part thereof remains now unpaid shall be authorized, and it is hereby made their duty forthwith upon the passage of this act to pay out of any funds in the county treasury of such county, accruing from any taxes levied for bridge, road, or general expense purposes thereof, any and all amounts now remaining due and unpaid for such levees so constructed, unto the party or parties who constructed the same or his or their assigns, said amounts to be determined by the probate judge of the county wherein said levees were constructed according to the prices at which for labor and materials, said constructions of said levees was undertaken by said party or parties, under the aforesaid order of said probate judge of said county; provided, however, that said levees shall have been fully completed to the satisfaction of said county commissioners.

Amounts due to be determined by probate judge.

SECTION 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
Passed April 17, 1878. *President pro tem. of the Senate.*

[Senate Bill No. 126.]

AN ACT

Supplementary to the acts passed February 24, 1876, and April 24, 1877; supplementary to the act relating to cities of the first class having a population exceeding one hundred and fifty thousand inhabitants, passed May 4, 1869 (O. L., vol. 66, page 80), and to repeal section nine and a portion of section four of said act.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That it shall be lawful for the board of trustees, ap-

Two million loan authorized.

pointed under the acts to which this is supplementary, and they are hereby authorized to borrow, as a fund, for the completion of the line of railway for which they are trustees, a sum in addition to the amounts authorized by said acts, not to exceed two millions of dollars, and to issue bonds therefor in the name and under the corporate seal of the city owning the line of railway. Said bonds shall be signed and attested in the same manner as the bonds authorized by the acts to which this is supplementary, and shall be secured by the pledge of the faith of the city, and a tax which shall be annually levied by the council of said city, on the real and personal property therein returned on the grand levy, sufficient to pay the interest thereon and provide a sinking fund for their final redemption, and they may be made payable, both as to principal and interest, in coin or lawful money, at such times and places and in such sums as shall be deemed best by said board of trustees: provided, that none of the bonds authorized by this act shall be sold for less than par in lawful money, or bear a greater rate of interest than seven per cent. per annum: provided, further, that it shall be unlawful for said trustees to use the whole or any part of said bonds, or the proceeds thereof, upon any part of said railway, which may have been in use for the passage of freight and passenger trains, before the passage of this act, or in providing terminal facilities, yards, workshops, depots, or depot grounds therefor, until after provision shall have been fully made by said trustees, for the complete construction of that part of said railway which may remain uncompleted at the date of the passage of this act, so as to admit of the passage of trains of passenger and freight cars from one terminus to the other terminus of said railway, and until the fund shall have been set aside and appropriated for that purpose, so as not to be diverted to any other object whatever; provided, further, that whenever, and as soon as said railway shall have been so far completed as that passenger and freight cars may pass over its line from one terminus to the other terminus thereof, or to any other railroad of similar gauge in the vicinity of said terminus, and extending thereto, and over said railroad to said terminus, all net earnings and incomes therefrom shall be paid into the treasury of said city, to the credit of the interest fund.

Bonds—how signed, attested, and secured.

Bonds not to be sold for less than par.

No part of proceeds of said loan to be used for terminal facilities, etc.

Provided, that said trustees, with the approval of the trustees of the sinking fund of the city owning said line of railway, may expend a sum not exceeding fifty thousand dollars ($50,000), in the purchase of rights of way, and such other terminal facilities as may be deemed necessary by them to meet the requirements of business and travel on that part of said railway which may, before the passage of this act, have been in use for the passage of freight and passenger trains.

Provided, further, that no bonds shall be issued or sold, until after the question of their issue shall have been sub-

mitted to a vote of the qualified electors of said city, after not less than ten days' notice of the time of taking said vote, which time shall be fixed by the mayor of said city, and proclamation thereof shall be made by him of the time of holding such election, which shall be held within twenty days from the passage of this act; and said vote shall be taken at the usual places of holding elections in each ward of said city, and the ballots cast at such election shall have written or printed thereon the words, "For issue of $2,000,000 bonds—Yes," or, "For issue of $2,000,000 bonds—No;" and no bonds shall be issued unless a majority of all the votes cast shall have written or printed thereon the words, "For issue of $2,000,000 bonds—Yes." The returns of said election shall be made to the city clerk, and by him laid before the common council, who shall declare the results by resolution.

No bonds to be issued until after question of issue has been submitted to vote.

Returns to be made to city clerk.

SECTION 2. Said trustees shall, in addition to the powers granted in the acts to which this is supplementary, have power to acquire by lease and hold lands for terminal facilities, and rights of wa thereto in the city owning the line of railway. The leases for the land so acquired shall be made to and in the name, and under the corporate seal of said city. They shall be signed and attested in the same manner as the bonds authorized by the acts to which this act is supplementary, and the rents therein reserved shall be secured by a covenant that the council of said city will annually levy a tax on the real and personal property thereof returned on the grand levy sufficient to pay the same: provided, that the aggregate amount of said rents shall not exceed six thousand dollars per annum: provided, that no lands or rights of way shall be leased or acquired by the said trustees without the approval of the trustees of the sinking fund of said city: provided, further, that all contracts made by the trustees of said railway contrary to any of the provisions of this act shall be void so far as the funds in the hands of the trustees are concerned, but shall be personally binding upon the trustees making the same.

Trustees may lease and hold lands for terminal facilities.

Leases—how executed.

Proviso.

SECTION 3. So much of the act passed May 4th, 1869, to which this act is supplementary, as refers to the compensation of the trustees, and the mode of fixing the same, is hereby repealed, and it is hereby enacted that the trustees of said railway shall receive no compensation for their services beyond an aggregate sum of five thousand dollars per annum.

SECTION 4. That before the execution of any lease or license to use any part or all of any such railway, by any trustees appointed under the said act, in any city of the first class, wherein there may be any board of trustees of the sinking fund in any such city, and before the award of any such lease or license to any lessee or licensee, or the delivery of possession under such lease or license to said lessee or licensee, said award and delivery of possession shall be sub-

mitted to and receive the approval of the trustees of the sinking fund aforesaid.

Trustees shall not use street or alley unless they make application and receive consent of board of public works.

SECTION 5. The trustees of said railway shall not use or occupy any street, alley, or other public way, space or ground, or any part thereof belonging to said city, unless they make application, in writing, and receive the consent thereto of the board of public works of said city: provided, that they shall have the right to use the streets and public ground now occupied by said railway.

SECTION 6. Nothing in this act contained shall require any purchaser or holder for value of any of said bonds authorized by this act, to look to the application of the proceeds thereof to the construction of said lines of said railway according to the requirements of this act.

SECTION 7. That section nine of the act entitled "an act relating to cities of the first class having a population exceeding one hundred and fifty thousand inhabitants," passed May 4, 1869 (volume 66, page 80), be and the same is hereby repealed.

SECTION 8. The trustees of said railway shall have the power, as fast as portions of the line for which they are trustees are completed, with the approval of the trustees of the sinking fund, to rent or lease, temporarily, the right to use and operate such portions upon such terms as they may deem best.

SECTION 9. Any and all parts of the acts to which this act is supplementary which are inconsistent with or in conflict with the provisions of this act are hereby repealed.

SECTION 10. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed April 18, 1878.

[Substitute for Senate Bill No. 83.]

AN ACT

Supplementary to an act entitled "an act supplementary to an act entitled an act to provide for the creation and regulation of incorporated companies in the State of Ohio." (O. L., volume 74, page 38.)

Corporations may be formed for building life-boats, etc.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That, in addition to the objects and purposes for which corporations may be formed under said act, and the acts of which it is amendatory and to which it is supplementary, corporations may be formed under this act, for the purpose of constructing and building improved life-boats, and improved launching apparatus (to be used for the convenience and protection of human life), and the vending and

selling of the same, and the power to grant and sell the privilege, and the right to manufacture, use, and dispose of the same, and the rights thereto in any manner not inconsistent with the laws of this State.

SECTION 2. This act shall take effect and be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed April 24, 1878.

[Substitute for Senate Bill No. 97.]

AN ACT

Supplementary to an act authorizing township trustees to levy a tax to purchase a site and erect a township hall thereon, passed May 6, 1869 (O. L., volume 66, page 120), as amended April 18, 1874 (O L., volume 71, page 95), as amended April 11, 1876 (O. L., volume 73, page 203.)

County commissioners in certain county to appoint precinct trustees to take charge of town hall, and lease or rent the same.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That when any voting precinct in any township in this state, situated in any county containing over three hundred thousand inhabitants, shall purchase a site and erect thereon a town hall, as provided for by law, it shall be the duty of the county commissioners, upon application being made to them by any number of the legal voters (not less than five) residing in said precinct, to appoint three legal voters, freeholders residing in such precinct, who shall be styled precinct trustees, to take charge of and have control over said town hall, to rent and let the same, for proper uses, to any person or persons; and any money paid to said precinct trustees, for the use of said town hall, shall belong to said precinct, and shall be used for the purpose of maintaining and repairing said town hall; said precinct trustees shall elect one of their number treasurer, who shall take charge of said fund, and give an undertaking to the state of Ohio, conditioned according to law, in such sum as the said precinct trustees shall require. Said precinct trustees shall serve without compensation and hold their offices for the term of three years from the time of their appointment as aforesaid, and until their successors are appointed.

Trustees to elect one of their number treasurer to receive rents, etc.

SECTION 2. This act shall take effect and be in force from and after its passage.

JAMES A NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed April 24, 1878.

[House Bill No 319.]

AN ACT

Supplementary to the act of May 1, 1873, entitled "an act for the reorganization and maintenance of common schools, and the several acts amendatory thereof (O. L., vol. 70, page 195), and to amend an act therein named."

Three electors may petition for joint sub-district.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That not less than three electors, resident of the territory sought to be included therein, may apply in writing to the board of education where any part of the territory is situated, for the creation of a joint sub-school district.

What petition must contain and where filed.

SECTION 2. The petition shall describe the territory sought to be included in the joint sub-district, may set forth the reasons requiring the creation thereof, and shall be filed with the clerk of the board of education of one of the townships interested.

Clerk to give notice to clerks of other boards of education interested.

SECTION 3. Upon the filing of such petition, it shall be the duty of the clerk of said board to forthwith give notice thereof, in writing, to the members of the board of which he is clerk, and to the clerks of all other boards of education having jurisdiction over any of the territory sought to be affected; and such clerk or clerks, upon the receipt of such notice, shall in like manner give notice forthwith of the filing of such petition to each member of the board of which they are severally clerks.

Board must consider petition within thirty days. If territory to be included is within two or more counties, petition may be filed with probate judge.

SECTION 4. It shall be the duty of the said boards of education to consider such petition within thirty days, but if they do not meet and consider the said application within sixty days from the filing of the petition; or, having met, fail to establish such joint sub-district, or determine not to do so, not less than three electors of the territory sought to be included therein may file a petition therefor with the probate judge of the county; and if the territory sought to be included therein is situated in two or more counties, the petition may be filed with the probate judge of either county.

Undertaking for costs to be filed.

SECTION 5. The petitioners shall also file with the said judge, the undertaking of one or more of their number, with security to the satisfaction of said judge, in the sum of one hundred dollars, conditioned that the petitioners will pay all the costs of the proceeding if a joint sub-district is not established thereby.

Judge to fix time of and place of meeting of commissioners.

SECTION 6. Upon the filing of such petition and undertaking, the judge shall fix a time, not more than sixty days thereafter, and a place, which shall be the school-house upon said territory, if there be one thereon, and if there be more than one school-house thereon, then the house last built; and if there be no school-house thereon, then some convenient place upon said territory, for the meeting of the commissioners hereinafter directed to be appointed.

Notice of filing petition to be published.

SECTION 7. The said judge shall thereupon cause to be published, for four consecutive weeks in two newspapers of opposite politics, printed or of general circulation in the county where the petition is filed, notice of the filing of such petition and of the time and place of meeting of the commissioners.

Judge to appoint three commissioners to act in the premises.

SECTION 8. The said judge shall also make an order appointing three judicious, disinterested men of the county, and not residents of either of the townships to be affected, to be commissioners, and to act in the premises; and if a person so appointed die, or fail from any cause to be present and to act, or give notice of his inability to serve, the said judge shall forthwith, by order, appoint another in his stead, who may act as if he had been originally appointed. The judge shall deliver a copy of the petition and his order to the commissioners.

Oath of commissioners.

SECTION 9. The commissioners shall take an oath faithfully to discharge the duties required by this act according to the best of their knowledge and understanding, and shall meet at the time and place named in the published notice and consider and determine the question whether a joint sub-district ought to be established or not.

Clerks of boards of education to be present.

SECTION 10. The clerks of the several boards of education interested shall be present at said time and place, and have with them the plats of the several townships with the lines of the several sub-school districts marked thereon, and such other papers and documents as will serve to inform the commissioners, and give them a correct idea of the wants of the petitioners.

Report of commissioners to whom made and what to contain.

SECTION 11. The commissioners shall report, in writing, to said probate judge—

1st. Whether or not a joint sub-district ought to be established, and their reasons therefor.

2d. If they find in favor of establishing a sub-district, they shall give the lines and a plat thereof, and they may change the lines of the sub-district proposed in the petition, by including therein other territory, or excluding territory included therein, or both.

Report if against joint sub-district to be final, unless set aside for fraud.

SECTION 12. The report of the commissioners, if against the establishment of a joint sub district, shall be a bar to any proceeding to establish a sub-district out of any of the territory described in the said petition for three years, and if the report be in favor of the establishment of a sub-district, it shall be final, unless set aside for fraud, by the probate court.

If report be against joint sub-district, court to give judgment against petitioners for costs.

SECTION 13. If the report be against the establishment of a joint sub-district, the judge shall render judgment against the petitioners for all the costs of the proceeding. The commissioners and the judge aforesaid shall receive the same fees authorized to be charged for like services in proceedings to establish roads, and such other fees as now are or may hereafter be authorized by law.

If in favor of joint sub-district court to confirm same and copy of entry given to clerks of boards of education interested.

SECTION 14. If the report be in favor of the establishment of a joint sub-district, the said judge shall make an entry confirming the same, and a certified copy of the report, including the plat and his order, shall be delivered to the clerk of the board of education of each township interested therein, and thereafter such joint sub-district shall be fully established, and it shall be governed and controlled for school purposes, as provided by law for other joint sub-districts.

In such case costs to be apportioned.

SECTION 15. In such case the said judge shall tax the costs of the proceeding to the boards of education of the several townships interested, in such proportion as he may deem just and equitable, and certify the same to the clerks of such boards, and said boards shall be liable for and shall pay the amounts so taxed to them respectively, at a regular or special meeting.

Petition may be filed with clerk of board of education, for changing lines of districts or creating special school districts.

SECTION 16. A petition may, in like manner, be filed with the clerk of the board of education of any township, praying for the creation of an additional sub district, or for changing the lines of sub-districts already existing, or for the creation of special school districts, changing the lines of special or village districts, and adjoining sub-districts: provided, that whenever a special or village district is interested in such proposed change, the petition may be filed either with the clerk of the township board or the clerk of the board of education of such special or village district.

Proceedings on filing petition notice.

SECTION 17. Upon the filing of such petition with the clerk of the board of education of such special or village district, or with the clerk of the board of education of the township, and if there be more than one township in which the lines of sub-districts are sought to be changed by said petition, then said notice may be filed with the clerk of the board of education of either township, and they shall be governed by the provisions of this act, for the formation of joint sub-districts.

Petition—when considered.

SECTION 18. It shall be the duty of said board or boards of education to consider such petition within thirty days; but if the board or boards of education do not meet and consider such applications within sixty days from the filing of such petition, or, having met, fail to grant the prayer of said petitioners, a petition may be filed with the probate judge of the county, as provided in section four of this act, and thereafter such proceedings may be had thereon, and they shall have the same effect as is herein provided for the formation of joint sub-districts.

Local directors of joint or special school districts—how elected, their terms, duties, etc.

SECTION 19. In every joint sub-district or special school district formed under the provisions of this act, the qualified electors of the same shall meet, upon at least five days' previous notice by any three of the electors, posted in three of the most prominent places in the district, and, under the provisions of the law for other similar districts, shall choose three local directors, or members of the board of education, as the case may be, to serve, one until the third Monday in

April next succeeding his election, one to serve for one year, and one to serve for two years from the said third Monday in April, or until their successors are elected and qualified. All succeeding elections shall be held according to law enacted for such districts; and the local directors or members of the board of education, so chosen, shall perform the same duties, and be subject to the same restrictions of law, as other like local directors or members of boards of education.

Board of education to prepare map of their township whenever necessary, and may increase or decrease sub-districts in number, or alter boundary, at any regular session.

SECTION 20. The said board shall prepare, or cause to be prepared, a map of their township, as often as they deem necessary, in which shall be designated the number of sub-districts respectively of the township, which sub-districts they may increase or diminish in number, and change or alter in boundary, at any regular session; but no sub-district shall contain less than sixty resident scholars by enumeration, except in cases where, in the opinion of the board, it is necessary to reduce the number. Whenever the board of education of any township district shall consolidate two or more sub-districts, to form a new sub-district, said board shall call a special meeting of the qualified electors resident in said new sub-district, for the purpose of electing three local directors for the same. At least five days before the time fixed for said meeting, said board shall post, in three of the most public places in the new sub-district, written or printed notices, stating the time, place, and object of holding said meeting. The election at such special meeting shall be conducted as provided in sections twenty-seven and twenty-eight of this act: provided, that three local directors shall be elected, one to serve for one year, one to serve for two years, and one to serve for three years from the annual meeting next preceding the organization of said new sub-district, and that the terms of office of the local directors of the sub-district so consolidated or made, shall expire at the time such new district shall have been created; and any sub-district which may be made or established by a general or local act of the general assembly, shall be governed by the provisions of this act, except that it cannot be changed, altered, or consolidated by the board of education, until after the expiration of three years after it has been so made or established; and that said original section thirty-two, as amended, be and the same is hereby repealed.

Proceedings to consolidate sub-districts.

Election of local directors in consolidated districts.

Their terms, etc.

SECTION 21. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed April 25, 1878.

[Senate Bill No. 70.]

AN ACT

To punish certain offenses therein named.

Unlawful to pay wages in scrip for goods at higher than current cash rates.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That it shall be unlawful for any person, firm, or corporation, to pay the wages of labor in goods or supplies, through the intervention of scrip, or any other evidence of indebtedness, or otherwise, at higher prices than current cash rates for like goods and supplies at the nearest retail market: provided, that the actual cost of the transportation of such goods and supplies, from such nearest market to the place of sale, may be added.

Unlawful to sell goods to laborers on orders from employers, at prices higher than current cash rates.

SECTION 2. It shall be unlawful for any person, firm, or corporation to sell goods or supplies to laborers on orders or other evidences of indebtedness issued to such laborers by their employers, or to sell to laborers by any arrangement with their employers, by which such laborers are to receive such goods or supplies on their wages at higher prices than current cash rates for like goods and supplies at the nearest retail market: provided, that the actual cost of the transportation of such goods and supplies, from such nearest market to the place of sale, may be added.

Penalties.

SECTION 3. Any person making any sale in violation of this act, whether as principal, agent, clerk, or otherwise, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five dollars nor more than fifty dollars.

SECTION 4. This act shall take effect and be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed April 27, 1878.

[House Bill No. 462.]

AN ACT

To authorize township trustees to procure, by purchase or otherwise, material for road purposes.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That whenever the trustees of any township of this state are unable to purchase of or contract with the owner or owners of any gravel bank, gravel bed, or other deposit of gravel, or the owner or owners of any stone, timber, or other

material, in the judgment of the trustees necessary for the construction or repair of any road or highway within the township, upon fair and equitable terms, or in case the owner or owners refuse to sell or contract with the trustees of any township for the sale of such material, upon the trustees agreeing to allow a just and reasonable compensation therefor, then said trustees are authorized and hereby empowered to condemn, for public use, said material, in such quantities as, in their judgment, the public needs may require, allowing the owners thereof a just and equitable compensation for the same.

Township trustees, where they are unable to contract for material for construction or repair of road, may condemn the same, and allow compensation to owner.

SECTION 2. An appeal from the amount of the compensation allowed by the township trustees for the payment of any material appropriated as aforesaid for public use, shall be allowed to the probate court of the county, and the court may order a view, as is provided in cases of appeal from the decisions of the trustees in establishing township roads, or make any other order that may be just and reasonable: provided, that the appellant shall enter into bond to the state of Ohio, for the use of the township, in the sum of one hundred dollars, with one or more good and sufficient sureties, to the acceptance of the township treasurer, within ten days from the date of the award of said trustees, conditioned for the payment of all costs arising from such appeal, if the compensation allowed be not increased by the proceedings had in the probate court; which appeal shall be entered with the probate court, within five days from the filing of the bond with the township treasurer. And no order shall issue for the taking and appropriation of any material mentioned in this act until fifteen days after the same shall have been condemned, at which time the clerk of the township may issue such order, by direction of the trustees, unless an appeal has been perfected agreeably to the provisions of this act.

Owner may appeal to probate court.

Appellant to give bond.

Proceedings on appeal.

SECTION 3. This act shall be in force and take effect from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed April 27, 1878.

[House Bill No. 519.]

AN ACT

Relative to certain civil actions.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That any civil action brought or prosecuted by the attorney-general, in behalf of the state of Ohio, or of any

Certain civil actions to be taken out of their order on application of the attorney-general.

public board or authority created by the laws thereof, or in which the state is a party, shall, upon his motion embodying a statement that the public interests require the same to be done, be taken out of its order upon the docket and assigned for trial at as early a day as practicable.

SECTION 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 1, 1878.

[Substitute for House Bill No. 103]

AN ACT

To reorganize and change the name of the Ohio Agricultural and Mechanical College, and to repeal certain acts therein named.

To be known as "The Ohio State University."

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the educational institution heretofore designated as the Ohio agricultural and mechanical college shall be known and designated hereafter as "The Ohio State University."

To be governed by board of seven trustees; how and by whom appointed.

SECTION 2. The government of said university shall be vested in a board of seven trustees, who shall be appointed by the governor of the state, with the advice and consent of the senate; but no trustee, or his relation by blood or marriage, shall be eligible to any professorship or position in the university, the compensation for which is payable out of the state treasury, or said college fund.

Their terms of office.

SECTION 3. The members of said board of trustees, and their successors, shall hold their offices for the term of seven years each: provided, that the trustees first appointed under the provisions of this act shall hold their terms for one, two, three, four, five, six, and seven years, respectively, to be fixed by the governor in their commissions. In case a vacancy shall occur from death or other cause, the appointment shall be for the unexpired term The trustees shall not receive any compensation for their services, but they shall be paid their reasonable and necessary expenses while engaged in the discharge of their official duties.

To be paid their expenses while engaged in discharge of duties.

Powers and duties of board.

SECTION 4. The board of trustees shall have power, and it is made their duty, to collect, or cause to be collected, specimens of the various cereals, fruits, and other vegetable products, and to have experiments made in their reproduction upon the lands of the university, and to make report of the same, from year to year, together with such other facts as may tend to advance the interests of agriculture.

SECTION 5. The board of trustees shall have power, and

it is hereby made their duty, to secure and keep in the said university a collection of specimens in mineralogy, geology, zoology, botany, and other specimens pertaining to natural history and the sciences; and it shall be the duty of the president of the university to collect and deposit in the said university in such manner as shall be directed by the trustees, a full and complete set of specimens as collected by him and his assistants, together with a brief description of the character of the same, and where obtained; and the said specimens shall be properly classified and kept for the benefit of said university.

Collections of specimens.

SECTION 6. The first meeting of the members of the board shall be called by the governor, as soon after the appointment of said board as convenient, to be held at said university, in Columbus, Ohio. All succeeding meetings shall be called in such a manner, and at such times as the board may prescribe. The said board shall meet at least three times annually, and at such other times as they may think necessary for the best interest of the said university. A majority of the board of trustees present at any meeting shall constitute a quorum to do business: provided, a majority of all the board shall be required to elect or remove a president or professor.

Meetings of board of trustees.

SECTION 7. The board of trustees shall cause to be made, on or before the first day of January of each year, a report to the governor of the condition of said university; the amount of receipts and disbursements, and for what the disbursements were made; the number of professors, officers, teachers, and other employés, and the position and compensation of each; the number of students in the several departments and classes, and the course of instruction pursued in each; also, an estimate of the expenses for the ensuing year; a statement showing the progress of said university, recording any improvements and experiments made, with their costs, and the results, and such other matters as may be supposed useful. There shall be printed, under the provisions of section seven (7) of the act passed March 30, 1875 (O. L., volume 72, page 179), in pamphlet form, one thousand copies of said report for the general assembly, one thousand for the president and faculty of said college, and three thousand copies for distribution by the trustees in their several districts, in such manner as they shall deem best for the interests of said university. The president of said university shall transmit by mail one copy to the secretary of the interior, and one copy to each of the colleges which are or may be endowed under the provisions of the act of congress of July 2, 1862.

Report of trustees, when made and what to contain.

Printing and distribution of report.

SECTION 8. All funds derived from the sale of land scrip issued to the state of Ohio by the United States, in pursuance of the aforesaid act of congress, together with the interest accumulated thereon, shall constitute a part of the irreducible debt of the state, the interest upon which, as provided

Funds from sale of land scrip to form part of irreducible debt, and interest of same paid to university.

as provided by the act of February 10, 1870 (O. L., volume 67, page 15), shall be paid to the university by the auditor of state, upon the requisition of the commissioners of the sinking fund, issued on the certificate of the secretary of the board of trustees, that the same has been appropriated by said trustees to the endowment, support and maintenance of the university, as provided in the act of congress aforesaid.

Board of trustees to fix compensation of faculty, teachers, etc.

SECTION 9. That said board of trustees shall fix the compensation for the faculty, teachers, and all other employés of the university: provided, that the compensation for the services of the president of said university shall not exceed three thousand dollars, and that of the professors twenty-five hundred dollars per annum.

In connection with faculty, to provide for teaching branches of learning.

SECTION 10. It shall be the duty of the board of trustees, in connection with the faculty of the university, to provide for the teaching of such branches of learning as are related to agriculture and the mechanic arts, mines and mine engineering, and military tactics, and such other scientific and classic studies as the resources of the fund will permit; but no student will be required to study military tactics or take part in military drill, or provide any military or particular uniform, except those who elect to study military tactics.

SECTION 11. That the act passed April 20, 1877 (O. L., volume 74, page 100), entitled "an act to regulate the Ohio agricultural and mechanical college in Ohio, and to repeal certain acts therein named," and all parts of acts repealed by said act, are hereby repealed.

SECTION 12. This act shall take effect and be in force from add after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Adopted May 1, 1878.

[Senate Bill No. 171.]

AN ACT

To amend section nine of an act entitled "an act supplementary to an act entitled 'an act to provide for the creation and regulation of incorporated companies in the state of Ohio,'" passed May 1, 1852; passed April 15, 1867, (S. & S. 186); as amended February 25, 1869, (O. L., volume 66, page 11); as amended April 20, 1874, (O. L., volume 71, page 161); as amended April 11, 1876, (O. L., volume 73, page 188); as amended March 12, 1877, (O. L., volume 74, page 38); as amended March 28, 1878, (O. L., volume 75.)

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That said section nine be so amended as to read as follows:

Section 9. Corporations may also be formed under this act for the following purposes:

1. For the preservation and exhibition of works of arts.
2. For encouraging and cultivating a taste for music.
3. For the advancement of legal, medical, theological, and religious knowledge, and knowledge in all the sciences, arts, trades, business, and professions in life, and the better and more convenient discharge of duties connected therewith.
4. For the formation and encouragement of floral, horticultural, nursery, and fruit companies; and for planting and growing trees for timber and for shade, and for planting and growing hedges.
5. For cutting, quarrying, buying, and selling marble, iron, slate, ice, or other material or artificial products.
6. For the promotion of agriculture, and the mutual benefit and gain of those engaged therein, in the purchase and sale of stock, commodities, and articles pertaining thereto, including household necessaries and luxuries.
7. For engaging in and carrying on the business of making and furnishing abstracts of title to real estate.
8. For the purpose of transporting freight and passengers in cities.
9. For the purpose of establishing and conducting public libraries.
10. For the formation and encouragement of harvest home festivals, and popular instruction, enjoyment, and displays of husbandry incident thereto.
11. For the protection of birds and other game.
12. For the protection of horses, mules, and other live stock, and for the prosecution of theft of same.
13. For the formation of wool growers' associations, having for their object the establishment of wool houses for the handling of wool and other produce, for doing a commission business, the furnishing of supplies to wool growers and others, and the dissemination through bureaus or journals useful knowledge and information pertaining to the improvement and protection of wool growing interests.

SECTION 2. That the act to amend section nine, amended as aforesaid, is hereby repealed.

SECTION 3. This act shall be in force from its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 3, 1878.

[House Bill No. 288.]

AN ACT

In regard to the boundary monuments on the line between the states of Ohio and Pennsylvania.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That as soon as practicable after the passage of this act, it shall be the duty of the governor to appoint three competent persons to be commissioned to act in conjunction with a similar commission of the state of Pennsylvania, (but not otherwise) to examine as to the true location of the monuments which make the boundary line between the state of Ohio and the state of Pennsylvania, and in connection with said commission of the said state of Pennsylvania to replace any monuments that have been removed, or have become displaced or dilapidated, on the boundary line of said states.

SECTION 2. Said commission shall report to the governor an account of all expenditures arising under this act, together with a full report of their proceedings, accompanied with such maps and drafts as may be necessary to a clear understanding of the same, and the governor shall report the same to the first meeting of the general assembly thereafter.

SECTION 3. The sum of two thousand dollars, or so much thereof as may be necessary for carrying out the provisions of this act, is hereby appropriated out of any money not otherwise appropriated.

SECTION 4. That if any person shall remove said monuments or in any way disturb the same so replaced by said commission, shall upon conviction thereof, be fined in any sum not more than five hundred dollars, nor less than one hundred dollars, or imprisoned in the county jail not more than six months nor less than one month or both at the discretion of the court.

SECTION 5. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 3, 1878.

[House Bill No. 322.]

AN ACT

Entitled an act to amend the act entitled an act to amend the first section of the act entitled "an act to amend sections one, two, four, five, six, and eleven of an act to authorize the county commissioners to construct roads on petition of a majority of the land owners along and adjacent to the line of said road, and to repeal an act therein named," passed March 29, 1867; passed March 31, 1868. (Ohio Laws, volume 65, page 41; Swan & Sayler, 673.)

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That section one of the above recited act be amended so as to read as follows:

Section 1. The county commissioners of any county in this state shall have power, as hereinafter provided, within such county, to lay out and construct any new county road, or to improve any state, county, or township road, or any part thereof, or any free turnpike road, or any part thereof not completed, by straightening or altering the same, and by grading, paving, graveling, planking, or macadamizing the same, and by draining the same in any direction required to make the most convenient and sufficient outlet; and for such purpose they shall have power upon further petition, when by them deemed expedient, to vacate any state, county, or township road, or any part thereof, or any free turnpike road, or any part thereof not completed, and improve several roads or parts of roads, or free turnpike road or roads, or parts thereof not completed, when the same may be united in one continuous road improvement. That the county commissioners shall improve by grading, graveling or macadamizing any unfinished turnpike road other than such as charge and receive tolls; when the grading has been already done and the bridges and culverts already built, one-half of the cost of said improvements to be assessed upon the land owners along and adjacent to the line of said road, to extend not exceeding two miles from either side of said road, the same as to extent of territory assessed and proportion of assessment as provided for in the act entitled an act to authorize county commissioners to lay out and construct free turnpike roads, passed March 29th, 1867, and as amended by law since that date; and one-half of said cost to be assessed upon the grand duplicate of the county.

Powers of county commissioners to lay out, construct, improve, or vacate any state, county, township, or free turnpike road.

May improve by grading, graveling, or macadamizing any unfinished turnpike other than such as receive tolls.

SECTION 2. Section one of the act to which this is amendatory and an amendment thereto, passed April 11th, 1876 (O. L., vol. 73, page 184), is hereby repealed.

SECTION 3. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed May 6, 1878.

[Substitute for House Bill No. 66.]

AN ACT

To authorize the transfer of funds in certain cases.

Special fund may be transferred to general revenue fund in certain cases.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That in all cases where, under any special act of the legislature, any city, village, county, township, school district, special school district, separately and jointly as the case may be, was or were authorized to levy a tax, or was or were authorized to issue bonds, for the purpose of raising funds to anticipate the amount arising from taxation under such act for any purpose authorized by such special law; and after the purpose for which such taxation was authorized has been or shall hereafter be fully accomplished, and there remain any funds unexpended, the authorities having in charge the disbursement of such funds are hereby authorized and required to cause such funds to be transferred, by a resolution duly entered upon the records of their respective boards, to the general revenue funds of such city, village, township, county, school board, or other body, to be thereafter disbursed by said boards.

SECTION 2. This act shall be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed May 6, 1878.

[House Bill No. 457.]

AN ACT

To authorize private cemetery associations brought within the corporate limits of incorporated villages to become incorporated.

Private cemetery association, how incorporated.

SECTION 1. *Be it enacted by the General [Assembly] of the State of Ohio*, That any association of persons, who having been acting as a cemetery association, purchasing, holding, and improving lands for cemetery purposes, paid for by subscriptions of lot holders and the sale of lots, acting through a board of trustees, chosen by the members of such association, and when the lands thus occupied for cemetery purposes have been bought or held within the corporate limits of any incorporated village, subsequently to the time of their purchase and improvement, may become incorporated for cemetery purposes under the act "making provision for the incorporation of cemetery associations," passed May 6, 1869, the same as though the lands held by such association were outside of corporate limits.

SECTION 2. That any association, organized under section one of this act is hereby empowered, as the successor of said

original association, through and by the concurrence of said original association, to take possession of, hold and use for cemetery purposes all the property belonging to and held by said original association for such purposes, with full power to sell and convey lots, and to do all and singular the things necessary in the proper arrangement of their affairs of such cemetery association.

May take and hold property held by original associations.

SECTION 3. All rights of present lot owners in the cemetery grounds of said original association are reserved and hereby assured to them and made valid without reference to the form of conveyance issued to them by the trustees of said original association.

Rights of owners of lots reserved.

SECTION 4. This act shall take effect and be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 7, 1878.

[Senate Bill No. 156.]

AN ACT

Directing how cities of the first class having accepted property or funds upon condition of establishing and maintaining an astronomical observatory, shall provide for the support of the same.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the board of education of any city of the first class having a population of one hundred and fifty thousand inhabitants or more, and having accepted property or funds upon condition of establishing and maintaining an astronomical observatory in connection with a university, shall, in addition to all other levies which they are or may be authorized or required by law to levy, be required to levy, annually, a tax on the taxable property of said city, of not less than three-hundredths of one mill, nor more than five-hundredths of one mill on the dollar valuation thereof, which levy said board shall certify to the county auditor on or before the first Monday in June in each year, who shall place it upon the tax duplicate, and the county treasurer shall collect the same at the same time and in the same manner as state and county taxes are collected, and when collected, shall pay the same over to the board of directors of said university, to be applied by said board of directors for the support of such astronomical observatory.

SECTION 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 7, 1878.

[House Bill No. 213.]

AN ACT

To amend an act entitled "an act supplementary to the act regulating the mode of administering assignments in trust for the benefit of creditors," passed April 6, 1867, passed March 6, 1861. (Vol. 58, page 26.)

Person performing labor before assignment, to be paid full amount of wages due, not exceeding three hundred dollars.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That every person who shall have performed any labor in the service of any person or corporation who shall hereafter assign property in trust for the benefit of creditors, shall be entitled to receive out of the trust fund when the same is insufficient to pay all debts of the assignor the full amount of the wages due to such person for such labor, not exceeding three hundred dollars: provided, that such labor shall have been performed within twelve months immediately preceding the assignment.

SECTION 2. That section one of the above recited act be and the same is hereby repealed.

SECTION 3. This act shall take effect from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 7, 1878.

[House Bill No. 290.]

AN ACT

Supplementary to an act entitled "an act to provide for the organization and government of municipal corporations," passed May 7, 1869. (66 Ohio Laws, page 149, etc.)

Real estate occupied as children's home may be made part of certain city of second class.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That real estate appropriated for and to be used by any "children's home," incorporated under the laws of this state, may be made part and parcel of any city of the second class that at the last federal census had, or at any subsequent federal census may have a population of ten thousand and eleven, in the manner and upon the condition hereinafter stated.

Said real estate to not exceed twenty acres and lie within one-half mile of city.

SECTION 2. Said real estate must lie in one tract not exceeding twenty (20) acres in area, and within a distance not exceeding one-half of one mile from the nearest point in the boundary line of said city at the time when the application for such extension of the city limits shall be made.

SECTION 3. The directors or trustees having charge of said children's home, or a majority of them, and the owners

of said real estate, may present to the city council of said city their petition, describing the land to be made parcel of said city, at or before any regular session of said council. If said petition be approved by a vote of a majority of said council, a certificate showing that vote shall be made and signed by the president of the council and the city clerk, and attached to said petition. The petitioners may then present their petition and said certificate to the county commissioners at any meeting of said commissioners, and shall also publish in some newspaper, published or of general circulation in said county, a notice stating the substance and prayer of said petition, and the date on which it will be presented to said commissioners, which date shall be at least twenty (20) days subsequent to the first publication of said notice.

Directors or trustees to petition council

If petition approved, to be presented to county commissioners.

SECTION 4. Said county commissioners, at any meeting held not less than twenty days subsequent to the first publication of said notice, if they, or a majority of them approve said petition, may make an order granting the same.

County commissioners to issue order granting same.

SECTION 5. The county auditor shall certify said order to the clerk of said city, who shall present it to the council and enter it upon their journal, and from and after the making of said order by said county commissioners, said real estate shall be within and become part and parcel of said city.

County auditor to certify order to clerk of city.

SECTION 6. The petitioners shall pay all the costs of said proceeding.

Costs.

SECTION 7. This act shall take effect and be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 7, 1878.

[Senate Bill No. 127.]

AN ACT

To provide for the administration of property given for the promotion of science, art, and like purposes, and to protect the same from waste.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That whenever five or more persons shall desire to create an incorporated association for the purpose of receiving, now or hereafter, gifts, devises, or trust funds, and to erect, establish, or to maintain an academy in any department of fine arts, or a gallery for the exhibition of paintings, sculpture, or other works of art, or a museum of natural or other curiosities or specimens of art, or nature, promotive of knowledge, or a law, or other library, or courses of lectures

Associations for receiving gifts, devises, etc., for law library, art purposes, etc., how incorporated.

upon science, art, philosophy, natural history, or law, and to open the same to public use on reasonable terms, such persons may do so in the following manner, to wit: They shall sign and duly acknowledge a certificate, which shall specify as follows: (1) The name assumed by such association, and by which it shall be known; (2) the names of the trustees or directors, not less than three nor more than twelve, two-thirds of whom shall be resident citizens of the county in which the corporation is to be located; (3) the name of the city or county in which it is proposed that said corporation shall be located; (4) the general objects and purposes of such association as above mentioned, or either or any one or more of said objects; (5) the tenure of office of the trustees, the mode of appointing or electing successors, the administration and management of the property, and trust, and other funds of the corporation, and such other organic rules as may be deemed expedient or acceptable to donors.

Certificate, where filed.

SECTION 2. Upon filing said certificate with the secretary of state, the persons named in said certificate as trustees or directors, and their successors in office, shall thereupon become a body corporate, by the name designated in said certificate, with the usual powers and franchises of a corporation under the constitution of this state, for the purposes and objects in said certificate set forth, having perpetual succession, the right to sue and to be sued, and to hold, receive, and manage any property, real or personal, or trust funds, or the rents, issues and profits thereof in the manner provided by the donors thereof, to promote the said purposes and objects of said association.

Powers of association.

How association may add to the original objects and purposes—proceedings.

SECTION 3. The provisions contained in said certificate, as provided in the fifth subdivision of the first section of this act, shall be deemed and remain the permanent organic law of said corporation; but such corporation, in respect to the objects and purposes of such corporation, provided in the fourth subdivision of the first section of this act, may, by supplemental certificate, duly acknowledged and filed by the trustees or directors in the office of the secretary of state, add to the original objects and purposes of the corporation, any of the several objects and purposes mentioned in the first section of this act, which were not provided for by the original certificate.

Officers of association to receive and disburse funds and keep accounts of same.

SECTION 4. The proper officers of said corporation charged or entrusted with the receipts and disbursements of the funds or property of such corporation, shall make and keep the same accurate and detailed account of such funds, and the receipts and disbursements thereof, as is now required to be kept by the fiscal agents of the state, under the act entitled "an act to provide for the publication of an accurate and detailed statement of the receipts and expenditures of the public revenue," passed March 14, 1853 (S. & C. 114, 51 vol., Stat. 428); and the said trustees of said corporation, on

or before the third Monday in January of each year, shall file with the clerk of the court of common pleas, of the county in which said corporation is located, an abstract of said account; and which abstract shall correspond in date, amount, person to whom paid, and from whom received, and on what account, with the voucher taken or given on account of such receipts and disbursements; and the said trustees shall at the same time, annually, file in said clerk's office a report of the names of the donors, the kind, amount, or value of gifts of each, and a brief statement of the conditions and the purposes of the gifts. The filing of said abstract and report, and requiring any omission in either to be supplied by said trustees, may be enforced by order and attachment of the court of common pleas of the proper county, on motion of any respectable citizen.

Abstracts of account to be filed with clerk of the common pleas court.

Report of names of donors and the amount of gifts also to be filed.

SECTION 5. No trustee shall be eligible to any office or agency of the corporation to which any salary or emolument is attached, nor shall the trustees be allowed any salary, emoluments, or perquisites whatsoever, except the right of free ingress to the grounds, rooms, and buildings of the corporation.

Trustees ineligible to certain offices of the corporation.

SECTION 6. On application in writing to the attorney-general of five citizens of the proper county, verified by the oath or affirmation of one of them, setting forth specific charges against any of the fiscal or other agents or trustees of such corporation, involving a breach or breaches of trust or duty, it shall be the duty of the attorney-general to give notice thereof to the trustees or agents complained of, and to inquire into the truth of such charges; and for this purpose he may receive affidavits, or enforce, by process from the court of common pleas of Franklin county, the production of papers and the attendance of witnesses before him; and if, on testimony or other evidence, he believes the said charges, or any of them, to be true, shall proceed, by petition and suit in said court, in the name of the state, against the delinquent trustee or trustees, fiscal agent or agents, and, on hearing, the court may render a decree directing the performance of any duty, or the removal of all or any of the agents or trustees, and decree such other and further relief as may be equitable.

Officer or trustee—how removed; and discharge of duty—how compelled.

SECTION 7. Such corporations shall not create any capital stock to be held by individuals, nor create any debts, nor incur any liabilities beyond the means and assets of said corporation derived from devises, bequests, donations, and gifts; and if said trustees contract debts or incur liabilities beyond the apparent means or assets of said corporation, the trustees so contracting shall be held liable, in their individual capacity, for the same, after exhausting the funds or assets which in accordance with trusts, may be applicable to the payment of such debts or liabilities.

No capital stock to be held by individuals, nor debts, to be created, nor liabilities incurred beyond means of association.

SECTION 8. This act shall take effect and be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 7, 1878.

[Senate Bill No. 181.]

AN ACT

To amend the act entitled "an act to authorize cities of the first cl ss to issue bonds for university purposes," passed April 27, 1872. (69 O. L., 164.)

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That section two of the said act be amended so as to read as follows:

Section 2. If any bonds of such city have been, or shall be hereafter issued, as provided in the foregoing section, it shall be the duty of the board of education of such city, annually thereafter, to include in the tax levy for school purposes a levy on all the taxable property of said city of one-tenth of one mill on the dollar valuation thereof on the duplicate, and the proceeds thereof shall be paid into the city treasury, and shall be pledged and applied by the common council of such city in payment of the interest which may accrue on said bonds, and as a sinking fund, not exceeding four (4) per cent. yearly on the amount of the bonds so issued, for the redemption of the principal, and the residue, if any, of such tax shall be paid over to the board of directors of such university every year, for the support of such university, college, or institution of learning: Provided, that whenever said bonds and the interest thereon shall have been fully paid, the board of education of such city may exercise the discretion conferred upon said board by the fifth section of the aforesaid act of April 16, 1870. (67 O. L., p. 87.)

SECTION 2. That said original section two of said act be and is hereby repealed, and this act shall be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 8, 1878.

[Senate Bill No. 141.]

AN ACT

To change the common pleas districts of the state, and to give greater efficiency to the common pleas and district courts, and to repeal certain parts of an act therein named.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the state shall be divided into five common pleas districts, as follows:

First district—how constituted.

The county of Hamilton shall constitute the first district.

Second district.

The counties of Butler, Preble, Darke, and Montgomery shall constitute the first subdivision; the counties of Champaign and Miami, the second subdivision; the counties of Warren, Clinton, Greene, and Clarke, the third subdivision; the counties of Clermont, Brown, and Adams, the fourth subdivision; the counties of Ross, Highland, and Fayette, the fifth subdivision; the counties of Pickaway and Madison, the sixth subdivision; and the county of Franklin the seventh subdivision of the second district, and together shall constitute such district.

Third district.

The counties of Logan, Union, and Hardin shall constitute the first subdivision; the counties of Shelby, Auglaize, Allen, Mercer, Van Wert, and Putnam, the second subdivision; the counties of Paulding, Williams, Fulton, Defiance, and Henry, the third subdivision; the counties of Seneca, Hancock, Wyandot, Crawford, Marion, and Wood, the fourth subdivision; the counties of Lucas, Ottawa, Sandusky, Erie, and Huron, the fifth subdivision; the counties of Morrow, Richland, and Ashland, the sixth subdivision of the third district, and together shall constitute such third district.

Fourth district.

The county of Cuyahoga shall constitute the first subdivision; the counties of Lorain, Medina, and Summit, the second subdivision; the counties of Geauga, Lake, and Ashtabula, the third subdivision; the counties of Carroll and Columbiana, the fourth subdivision; the county of Stark, the fifth subdivision; the counties of Trumbull, Portage, and Mahoning, the sixth subdivision of the fourth judicial district, and together shall constitute such fourth district.

Fifth district.

The counties of Fairfield, Hocking, and Perry shall constitute the first subdivision; the counties of Jackson, Vinton, Pike, Scioto, and Lawrence, the second subdivision; the counties of Gallia, Meigs, Athens, and Washington, the third subdivision; the counties of Muskingum, Morgan, Noble, and Guernsey, the fourth subdivision; the counties of Belmont and Monroe, the fifth subdivision; the counties of Jefferson, Harrison, and Tuscarawas, the sixth subdivision; the counties of Licking, Knox, and Delaware, the seventh subdivision; the counties of Wayne, Holmes, and Coshocton, the eighth subdivision of the fifth judicial district, and together shall constitute such fifth district.

SECTION 2. In each judicial district three common pleas judges shall be designated and assigned to hold the district

courts in such district: provided, that if any judge of the supreme court be present, he shall be a member of and preside at such court; and provided further, that the other common pleas judges of the district shall not be by this act precluded from sitting as members of said court.

Supreme court may designate judges to hold district courts.

SECTION 3. The supreme court, or a majority of the judges thereof, shall designate said three common pleas judges in each district, and by rule of court, or otherwise, arrange for a presiding judge in holding district courts.

Said judges relieved from common pleas duty.

SECTION 4. Said designated judges shall not be required to hold common pleas courts, and shall continue to act as such district court judges until the expiration of their several terms for which elected, unless sooner relieved by assignment otherwise by the judges of the supreme court; and in fixing the terms of courts in each of said districts, a majority of said designated judges shall fix the times for holding district courts, and they, with the other common pleas judges, the times for holding the common pleas courts, as now provided by law.

Common pleas judges not designated to hold district courts may be required to hold court in any county in district.

SECTION 5. The common pleas judges, or any of them, not assigned to the holding of district courts, may be required to hold common pleas court or courts, in any county of the district when necessary, but shall not be permanently transferred to any other subdistrict, nor required to perform judicial duties in any subdistrict other than that of his election, except when, in the opinion of the designated district judges, or a majority of them, his services are needed elsewhere.

Common pleas judges to be subject to orders of judges of district courts, and district court judges to be subject to orders of supreme court.

SECTION 6. For the purpose of assuring the prompt holding of courts authorized by law, and their continuance sufficiently to transact pending business, and to have additional judicial force, when necessary, in any court, the common pleas judges not assigned, as aforesaid, to hold district courts, shall be subject to the orders of the judges so assigned, or a majority of them; and said judges so assigned shall be subject to the orders of the supreme court, or a majority of the judges thereof.

Mileage allowed to assigned judges.

SECTION 7. The said assigned judges shall be allowed mileage for the distance outside of the counties of their respective residences that they may be required to hold district courts, the same as now allowed to members of the general assembly.

Repealing clause.

SECTION 8. That section seventeen of the act entitled "an act to establish the superior court of Cincinnati," passed April 7, 1854, and all portions of said act conferring upon said superior court at general term jurisdiction to entertain petitions in error, and to reverse, vacate, or modify judgments and orders of said court at special term, shall be and are hereby repealed. All proceedings in error which shall be pending in said court on the first Monday of October, 1878, shall be by said court at once certified to the district court of the first judicial district, and the clerk shall forthwith transmit to said district court the papers in such cases, with

a transcript of the docket and journal entries therein. Said district court shall thereupon have full jurisdiction of such cases, and the conditions of all undertakings therein shall apply to the orders and decrees of said district court, and from and after said time final judgments and orders of said superior court may be reversed, vacated, or modified by said district court in the same manner and by like proceedings as judgments and orders of the court of common pleas.

SECTION 9. This act shall take effect on the first Monday of October, A.D. 1878.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed May 10, 1878.

[Substitute for Senate bill No. 4.]

AN ACT

Supplementary to an act "to amend, revise, and consolidate the statutes relating to crimes and offenses, and to repeal certain acts therein named, to be known as title one, crimes and offenses, part four of the act to revise and consolidate the general statutes of Ohio," passed May 5, 1877, vol. 74, p. 240.

Unlawful to pay wages in scrip, check, draft, etc., payable otherwise than in money.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That it shall be unlawful for any person, firm, company, or corporation to issue or use any scrip, token, check, draft, or certificate of indebtedness, payable otherwise than in money in the payment of or accounting to any person for the wages of work and labor.

Unlawful to issue or circulate same.

SECTION 2. It shall be unlawful for any person, firm, company, or corporation to issue, use, or circulate, or cause to be issued, used, or circulated any check, token, promise in writing, or evidence of indebtedness, designed, intended, or calculated to be circulated or issued as money or in lieu of money, other than lawful money of the United States.

Penalty.

SECTION 3. Any person or persons offending against any of the provisions of this act, shall be held guilty of a misdemeanor, and upon conviction thereof before any court of competent jurisdiction, shall be fined in any sum not less than ten dollars nor more than one hundred dollars.

SECTION 4. This act shall take effect from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed May 10, 1878.

[Senate Bill No. 148.]

AN ACT

Relating to offenses against chastity and morality.

Sexual intercourse of superintendent or teacher with pupil —how punished.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That if any male person over twenty-one years of age, who is superintendent, tutor, or teacher in any private or public school, or seminary, or public institution, or instructor of any female in music, or any branch of learning, shall have sexual intercourse at any time or place, with any female, with her consent, while under his instruction, during the term of his engagement as superintendent, tutor, or instructor, shall be imprisoned in the penitentiary not more than ten years nor less than one year, but in such case the evidence of the female must be corroborated to the extent required as to the principal witness in cases of perjury.

SECTION 2. This act to take effect and be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed May 10, 1878.

[Senate Bill No. 7.]

AN ACT

To authorize certain courts to appoint stenographers.

In certain counties stenographic reporters to be appointed by judges of the court of common pleas.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That it shall be the duty of the judges of the courts of common pleas in all counties in this state containing cities of thirty thousand inhabitants or over, by the census of the United States taken in the year 1870, to appoint two stenographic reporters, who shall be skilled in their profession, to be the official stenographers of such courts, who shall hold their office for the term of three years from the date of their appointment and until their successors shall be appointed and qualified, unless they, or either of them, shall be removed by said judges for neglect of duty, misconduct, or incompetency, and where there now is or hereafter may be a superior court in such county, the judges of such court and of the court of common pleas in such county shall jointly make the appointments therein provided for.

Official stenographers, when so appointed, shall be ex-officio the stenographers of the district and probate courts of such counties, and the superior courts of such cities siting in general term.

Such official stenographers shall take an oath for the faithful discharge of the duties of their office. Their oath.

SECTION 2. Upon the trial of any cause in any of said courts, if either party to the suit, or their attorney, shall request the services of the official stenographers, the presiding judge may, in his discretion, or upon his own motion, order a full report of the testimony or other proceeding, in which case it shall be the duty of the official stenographer to cause accurate short-hand notes of the oral testimony or other proceedings to be taken, which notes shall be filed in the office of the official stenographers, and preserved: provided, that before such order shall be made, upon application to the court by either party, the plaintiff or defendant requesting the services of such official stenographer shall be required, as a condition precedent, to pay or secure to be paid, the per diem fees, as hereinafter provided for. When party requests it, the court may order a full report of the testimony. Duty of official stenographer in such case.

The fees of the official stenographers for attendance in court and taking notes, as provided in this section, shall be not exceeding ten dollars per diem for each day actually employed in taking notes, which fees shall be paid out of any funds not otherwise appropriated in the treasury of the county in which said courts are held. And the clerk of said court shall certify the number of days of attendance of said official stenographers, in such cases, which certificate shall be a sufficient voucher to the auditor of the county, upon which he shall draw his warrant upon the treasurer of said county, and when so paid, such fees shall be taxed and collected as other costs in the case. Fees of stenographers, and how paid.

Where short-hand notes have been taken in any cause, as provided in this section, if the court or either party to the suit, or their attorney, shall request a transcript of the said notes into long-hand, it shall be the duty of said official stenographers to cause full and accurate transcripts to be made of the testimony or other proceeding, which shall be filed with the clerk of the court where such cause is tried, for the use of the court or parties. Transcripts of testimony to be furnished to party if requested.

The fees of the official stenographers for making such transcripts shall be eight cents per folio of one hundred words, and shall be paid forthwith by the party or parties for whose benefit the same is ordered, and when paid, shall be taxed as other costs in the case: provided, that all transcripts made in criminal causes, and transcripts ordered by the court, where not asked for by the parties, shall be paid out of the county treasury, in the manner provided in this section for the payment of fees for taking short hand notes. Fees of stenographers for transcripts.

SECTION 3. Stenographers appointed under the provisions of this act, shall have their office in the court-house of the county where they are appointed, and may be appointed referees to take and report proof in causes pending in said courts, and shall have power to swear witnesses, and to take and certify depositions in any of the courts in this state, and Stenographers to have office in court-house, and may be appointed referees to to take and report evidence, etc.

shall have power to employ such number of assistant stenographers as the necessities of their office may require.

SECTION 4. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed May 10, 1878.

[Senate Bill No. 11.]

AN ACT

To establish the Girls Industrial Home and to repeal certain acts therein named.

School for instruction and reformation of girls.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That there shall be maintained on land heretofore conveyed to the state of Ohio for the purpose, a school for the instruction, employment, and reformation of evil-disposed, incorrigible, and vicious girls, to be called the Girls Industrial Home, and the government of said school shall be vested in a board of five trustees to be appointed and commissioned by the governor forthwith by and with the advice and consent of the senate, whose term of office shall be one for one year, one for two years, one for three years, one for four years, and one for five years, and until their successors are appointed one of whom shall be a resident of the county where the home is located. If any vacancy shall occur in said board by resignation or otherwise, during the recess of the general assembly, it shall be the duty of the governor to fill said vacancy by appointment, and the person so appointed shall hold his office until the next session of the general assembly and for twenty days after the commencement of said session. The trustees shall receive no compensation for their services, but shall be paid their necessary expenses by the state treasurer on the order of the auditor.

Trustees, how appointed.

Oath and organization of trustees.

SECTION 2. Before entering upon the discharge of their duties, they shall take and subscribe to an oath or affirmation, to obey the constitution of the United States and of the state of Ohio, and faithfully to discharge the duties of their office, which shall be recorded in their journal. They shall organize by electing a president and secretary, who shall be of their number, and a treasurer who may or may not be of their number. The treasurer, before entering upon the discharge of the duties of his office, shall give a bond in the sum of ten thousand dollars, with good and sufficient sureties, to be accepted by the governor and deposited with the treasurer of state, conditioned for the faithful discharge of his duties as treasurer, and that he will properly account

Treasurer of board to give bond.

for all moneys that may come into his hands by virtue of his office.

Duties of trustees.

SECTION 3. The trustees shall take charge of the general interests of the institution; shall see that its affairs are conducted in accordance with the requirements of the legislature, and of such by-laws as they may from time to time adopt, (subject to the approval of the governor) for the orderly and economical management of its concerns; they shall see that strict discipline is maintained therein; shall provide employment for the inmates, and bind them out, discharge or remove them as hereinafter provided. They shall appoint a superintendent, who shall hold his office for three years unless sooner removed by them for cause, and such other officers to be nominated by the superintendent as in their judgment the wants of the institution may require, and prescribe their duties, remove them at pleasure, appoint others in their stead, determine their salaries respectively, and exercise general supervision over the institution. A majority of said board shall constitute a quorum.

Superintendent and other officers.

Committee of visitors to be appointed by governor.

SECTION 4. The governor shall appoint a committee of visitors for said girls industrial home, which shall consist of three women, one of whom shall be a resident of the county in which such home is located, whose term of service shall be for three years, and until their successors are appointed. The said committee shall receive no compensation for their services, but shall be paid their necessary expenses by the state treasurer on the order of the auditor. Any vacancy in said committee, by resignation or otherwise, shall be filled by appointment of the governor.

Organization of committee, their duties, etc.

SECTION 5. Before entering upon the discharge of their duties, the said committee shall organize by electing a president and secretary, who shall be of their number. The said committee shall visit the home as often as once in every three months, shall then make a thorough examination as to the general welfare and condition of the girls and the workings of the institution, and at their earliest convenience they shall make a written report of the results of their visits, with such recommendations as they may deem advisable; said report shall be under seal, and addressed to the president of the board of trustees; said board of trustees shall cause said report of the committee of visitors to be spread in full upon their minutes, at their next regular meeting.

Report of committee.

Salaries, and how paid.

SECTION 6. All salaries shall be paid quarterly, on the certificate of the president of said board of trustees, by an order drawn by the auditor of state on the state treasury, and all money for building purposes or current expenses shall be drawn in like manner, but not more than two thousand dollars shall be drawn at any one time from the state treasury. Said board shall report annually to the governor on or before the first day of December. The said report shall contain full and detailed accounts of all payments made and moneys received, and the true condition of the institution;

Annual report, what to contain.

which report, together with the report of the superintendent and treasurer, the governor shall have printed, and shall transmit the same to the general assembly. No trustee, superintendent, officer, or employé of said institution shall be interested in any sale, trade, or business carried on in said institution, and for any violation of this provision such officer or employé shall be subject to a fine of not less than one hundred dollars, nor more than one thousand dollars, and be removed from office.

Legacies, devises, etc.

SECTION 7. The said board of trustees shall receive and hold, or invest all legacies, devises, bequests, or donations made to the home, of every description, in behalf of the state, for the purposes of this act.

Board to direct general management of farm.

SECTION 8. It shall be the duty of said board to direct the general management of the farm, as regards its productions, mechanical, agricultural, and horticultural, and for this purpose may employ suitable superintendents to superintend the different producing interests prosecuted on said farm, but no provisions contained in this act shall be so construed as to authorize the letting of the labor of any of the inmates of the institution to any person or persons for the purpose of manufacturing, but said labor shall be employed by the superintendent exclusively in the interests of the institution. And the superintendent shall cause the accounts of the institution to be so kept that the profits over and above the expense of maintaining the school, can be ascertained, and when thus ascertained, the board of trustees shall fund such annual profits of the institution for distribution among the girls, in shares to be paid to the girls, pro rata, when either of them may be honorably discharged from the institution. They shall also see that such productions as are not needed by the institution are sold to the best advantage. The value of all productions, whether used or sold, shall be duly accounted for in the annual report.

Superintendent to keep accounts of institution.

Disposition of girl brought before probate court, etc.

SECTION 9. Whenever any girl above the age of nine and under the age of fifteen years, shall be brought by any constable or public officer, or other inhabitant of any town, or city, or township of any county in this state, before any probate court of the proper county, upon the allegation or complaint under oath that said girl has committed any offense known to the laws of this state punishable by fine and imprisonment, other than such as may be punished by imprisonment for life, or that she is leading a vicious or criminal life, it shall be the duty of said probate judge to forthwith issue an order in writing addressed to the father of said girl if he be living and resident of the town, township, or city where said girl may be found, and if not, then to her mother, if she be living and so resident; and if there be no father or mother resident as aforesaid, then to her guardian, then to the person with whom the girl shall reside, which order shall require said father, mother, guardian, or other

person, as the case may be, to appear before said probate judge, at some time and place to be therein named, to show cause, if any there be, why said girl shall not be committed to the industrial home for girls, heretofore established and reorganized by this act, and upon the appearance of the party named in said order, or failure to appear upon the expiration of the time named in the order of said appearance, said judge shall proceed to examine said girl and party, and hear such testimony as may be presented before him in relation to the case, and should it appear to the satisfaction of the judge aforesaid that the girl is a suitable subject for the industrial home he shall commit said girl to the same, and for that purpose he shall issue his warrant to the sheriff of the proper county, or to some suitable person to be appointed by him, commanding him to take charge of said girl, and deliver her without delay to the superintendent of said home, and the fees of said probate judge, sheriff, and other costs incurred in said proceedings, shall be the same as are paid in similar cases under the laws now in force, and shall be paid by the proper county in the same manner: provided, that nothing in this act shall be construed to prevent any girl arrested for crime from demanding a trial by jury, and when any such demand is made, by or in behalf of such girl, the probate judge is hereby authorized after an examination of the case, in his discretion, to either discharge her or cause her to enter into a recognizance for her appearance before the court of common pleas of the county, forthwith, if said court be in session, and if not in session, then at the first day of the next term thereof, to answer to such charge, and in default of such bail, to commit her to the jail of the county until the first day of said next term of common pleas court, or until discharged by due course of law, and shall forward to the clerk of said common pleas court a transcript of his proceedings in the case; and shall also cause such witnesses as may appear against her before him, to be recognized to appear at the said term of common pleas court to give evidence against her.

Fees.

Proviso as to trial by jury.

SECTION 10. Any girl duly committed to said home shall there be kept, disciplined, instructed, employed, and governed. under the direction of the said board of trustees, until she be either reformed and discharged, or shall be bound out by said trustees, according to their by-laws, or shall have attained the age of eighteen years: provided, that the trustees shall have the right to discharge and return to the parents, guardian, or protector, any girl, who, in their judgment, ought for any cause to be removed from said home, and in such case the trustees shall enter upon their records the reasons for her discharge, a copy of which record, signed by their secretary, shall be forthwith transmitted to the probate judge by whom the girl was committed.

Detention, discharge of girls committed.

SECTION 11. Whenever any girl between the ages of nine and fifteen shall be brought before any court of criminal jur-

Proceedings when girl between the ages of nine and fifteen is charged with criminal offense.

isdiction, charged with any offence, punishable by fine or imprisonment, other than imprisonment for life, and if found guilty would be a proper subject for commitment to said home, an order to that effect shall be entered on the records of the proceedings of said court, and thereupon it shall be the duty of said court by warrant in due form of law, or order to cause such girl to be forthwith taken before the probate judge of the proper county, and transmit to said probate judge the complaint and indictment, or warrant, by virtue of which she shall have been arrested, and thereupon the probate judge shall proceed in the same manner as if she had been brought before him upon original complaint, as is provided in this act.

Girls may be apprenticed by trustees.

SECTION 12. The trustees may bind out as an apprentice or servant, any girl committed to their charge, for a term not longer than until she arrives at the age of eighteen years, and the person to whom the girl is bound, shall, by the terms of the indenture, be required to report to the trustees as often as once in six months, her conduct and behavior, and whether she is living under his care, and if not, where she is.

As to transfer of indentures.

SECTION 13. A person receiving an apprentice under the provisions of the last section of this act, shall not assign or transfer the indenture of apprenticeship, nor let out her services for any period without the consent in writing of the trustees. If the person, for any cause, desires to be relieved from the contract, the trustees, upon application, may in their discretion cancel the indenture and resume the charge and management of the girl, and have the same power and authority in regard to her as before the indenture was made.

In case of ill treatment, apprentice to be discharged from service and returned to home.

SECTION 14. If the person is guilty of cruelty or misusage toward the girl so bound to service, or any violation of the terms of the indenture, the girl or trustees may make complaint to the probate judge of the proper county, who shall summon the parties before him, and examine into the complaint, and if it appear to be well founded, he shall, by certificate under his hand, discharge the girl from all obligations of future service, and restore her to the home, to be managed as before her indenture.

Trustees to be guardian of apprenticed girl.

SECTION 15. The trustees shall be the guardians of every girl so bound or held to service, and shall take care that the terms of the contract are faithfully fulfilled, and that she is properly treated, and shall cause any grievance to be redressed.

Superintendent with subordinate officers to have general charge of girls, etc.

SECTION 16. The superintendent, with such subordinate officers as the trustees may appoint, shall have the general charge and custody of the girls. He shall be a constant resident at the home, and under the direction of the trustees, shall discipline, govern, instruct, and employ, and use his best endeavors to reform, in such manner as shall, while preserving their health, and promoting the proper development of their physical system, secure the formation, as far as possible, of moral and industrious habits, and regular thorough

progress and improvement in their studies, trades, and employments.

His bond, responsibility, etc.

SECTION 17. He shall, before he enters upon the duties of his office, give bond to the state of Ohio, with sureties satisfactory to the trustees, in the sum of ten thousand dollars, conditioned that he shall faithfully perform all his duties and account for all moneys received by him as superintendent, which bond, when approved, shall be filed with the treasurer of state. He shall have charge of all property pertaining to the home within the precincts thereof, and shall keep in suitable books, complete accounts of all his receipts and expenditures, and of all property entrusted to him, showing the income and expenses of the institution, and shall account to the treasurer in such manner as the trustees may require, for all moneys received by him. His books, accounts, and documents relating to the home, shall at all times be open to the inspection of the trustees. He shall keep a register, containing the name and age of each girl, and as far as possible, the circumstances connected with her history prior to the time of her admission to the home, and he shall add thereto such facts as may come to his knowledge relating to her history while at the institution, and after leaving it.

To keep books, accounts, register, etc.

Contracts, how made, etc.

SECTION 18. All contracts on account of the institution shall be made by the superintendent in writing, and approved by the trustees, if their by-laws require it, and the superintendent or his successor may sue thereon, to final judgment and execution. No suit shall abate by reason of the office of superintendent becoming vacant, but any successor in office may take upon himself the prosecution or defense thereof, and upon motion of the adverse party, and notice, he shall be required to do so.

Trustees to examine home.

SECTION 19. Once in every three months, the home, in all its departments, shall be thoroughly examined by a majority of the trustees.

Salary of superintendent and matron.

SECTION 20. The salary of the superintendent shall be at the rate of twelve hundred dollars per annum, and of the principal matron, four hundred dollars per annum.

No debts to be contracted in excess of appropriation.

SECTION 21. No trustee, superintendent, officer, or employé connected with the institution, shall contract any debts for the institution in excess of the appropriation, and for any debt thus contracted, said trustee, officer, or employe, shall be liable in his individual capacity.

SECTION 22. This act shall take effect and be in force from and after its passage, and the act entitled an act to establish a reform and industrial school for girls, passed May 5th, 1869, is hereby repealed, and the act to change the name of the state reform and industrial school for girls, passed April 29th, 1872, is hereby repealed.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed May 10, 1878.

SECTION 8. This act shall take effect and be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 7, 1878.

[Senate Bill No. 181.]

AN ACT

To amend the act entitled "an act to authorize cities of the first cl ss to issue bonds for university purposes," passed April 27, 1872. (69 O. L., 164.)

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That section two of the said act be amended so as to read as follows:

Section 2. If any bonds of such city have been, or shall be hereafter issued, as provided in the foregoing section, it shall be the duty of the board of education of such city, annually thereafter, to include in the tax levy for school purposes a levy on all the taxable property of said city of one-tenth of one mill on the dollar valuation thereof on the duplicate, and the proceeds thereof shall be paid into the city treasury, and shall be pledged and applied by the common council of such city in payment of the interest which may accrue on said bonds, and as a sinking fund, not exceeding four (4) per cent. yearly on the amount of the bonds so issued, for the redemption of the principal, and the residue, if any, of such tax shall be paid over to the board of directors of such university every year, for the support of such university, college, or institution of learning: Provided, that whenever said bonds and the interest thereon shall have been fully paid, the board of education of such city may exercise the discretion conferred upon said board by the fifth section of the aforesaid act of April 16, 1870. (67 O. L., p. 87.)

SECTION 2. That said original section two of said act be and is hereby repealed, and this act shall be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 8, 1878.

[Senate Bill No. 141.]

AN ACT

To change the common pleas districts of the state, and to give greater efficiency to the common pleas and district courts, and to repeal certain parts of an act therein named.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the state shall be divided into five common pleas districts, as follows:

First district—how constituted.

The county of Hamilton shall constitute the first district.

Second district.

The counties of Butler, Preble, Darke, and Montgomery shall constitute the first subdivision; the counties of Champaign and Miami, the second subdivision; the counties of Warren, Clinton, Greene, and Clarke, the third subdivision; the counties of Clermont, Brown, and Adams, the fourth subdivision; the counties of Ross, Highland, and Fayette, the fifth subdivision; the counties of Pickaway and Madison, the sixth subdivision; and the county of Franklin the seventh subdivision of the second district, and together shall constitute such district.

Third district.

The counties of Logan, Union, and Hardin shall constitute the first subdivision; the counties of Shelby, Auglaize, Allen, Mercer, Van Wert, and Putnam, the second subdivision; the counties of Paulding, Williams, Fulton, Defiance, and Henry, the third subdivision; the counties of Seneca, Hancock, Wyandot, Crawford, Marion, and Wood, the fourth subdivision; the counties of Lucas, Ottawa, Sandusky, Erie, and Huron, the fifth subdivision; the counties of Morrow, Richland, and Ashland, the sixth subdivision of the third district, and together shall constitute such third district.

Fourth district.

The county of Cuyahoga shall constitute the first subdivision; the counties of Lorain, Medina, and Summit, the second subdivision; the counties of Geauga, Lake, and Ashtabula, the third subdivision; the counties of Carroll and Columbiana, the fourth subdivision; the county of Stark, the fifth subdivision; the counties of Trumbull, Portage, and Mahoning, the sixth subdivision of the fourth judicial district, and together shall constitute such fourth district.

Fifth district.

The counties of Fairfield, Hocking, and Perry shall constitute the first subdivision; the counties of Jackson, Vinton, Pike, Scioto, and Lawrence, the second subdivision; the counties of Gallia, Meigs, Athens, and Washington, the third subdivision; the counties of Muskingum, Morgan, Noble, and Guernsey, the fourth subdivision; the counties of Belmont and Monroe, the fifth subdivision; the counties of Jefferson, Harrison, and Tuscarawas, the sixth subdivision; the counties of Licking, Knox, and Delaware, the seventh subdivision; the counties of Wayne, Holmes, and Coshocton, the eighth subdivision of the fifth judicial district, and together shall constitute such fifth district.

SECTION 2. In each judicial district three common pleas judges shall be designated and assigned to hold the district

courts in such district: provided, that if any judge of the supreme court be present, he shall be a member of and preside at such court; and provided further, that the other common pleas judges of the district shall not be by this act precluded from sitting as members of said court.

Supreme court may designate judges to hold district courts.

SECTION 3. The supreme court, or a majority of the judges thereof, shall designate said three common pleas judges in each district, and by rule of court, or otherwise, arrange for a presiding judge in holding district courts.

Said judges relieved from common pleas duty.

SECTION 4. Said designated judges shall not be required to hold common pleas courts, and shall continue to act as such district court judges until the expiration of their several terms for which elected, unless sooner relieved by assignment otherwise by the judges of the supreme court; and in fixing the terms of courts in each of said districts, a majority of said designated judges shall fix the times for holding district courts, and they, with the other common pleas judges, the times for holding the common pleas courts, as now provided by law.

Common pleas judges not designated to hold district courts may be required to hold court in any county in district.

SECTION 5. The common pleas judges, or any of them, not assigned to the holding of district courts, may be required to hold common pleas court or courts, in any county of the district when necessary, but shall not be permanently transferred to any other subdistrict, nor required to perform judicial duties in any subdistrict other than that of his election, except when, in the opinion of the designated district judges, or a majority of them, his services are needed elsewhere.

Common pleas judges to be subject to orders of judges of district courts, and district court judges to be subject to orders of supreme court.

SECTION 6. For the purpose of assuring the prompt holding of courts authorized by law, and their continuance sufficiently to transact pending business, and to have additional judicial force, when necessary, in any court, the common pleas judges not assigned, as aforesaid, to hold district courts, shall be subject to the orders of the judges so assigned, or a majority of them; and said judges so assigned shall be subject to the orders of the supreme court, or a majority of the judges thereof.

Mileage allowed to assigned judges.

SECTION 7. The said assigned judges shall be allowed mileage for the distance outside of the counties of their respective residences that they may be required to hold district courts, the same as now allowed to members of the general assembly.

Repealing clause.

SECTION 8. That section seventeen of the act entitled "an act to establish the superior court of Cincinnati," passed April 7, 1854, and all portions of said act conferring upon said superior court at general term jurisdiction to entertain petitions in error, and to reverse, vacate, or modify judgments and orders of said court at special term, shall be and are hereby repealed. All proceedings in error which shall be pending in said court on the first Monday of October, 1878, shall be by said court at once certified to the district court of the first judicial district, and the clerk shall forthwith transmit to said district court the papers in such cases, with

a transcript of the docket and journal entries therein. Said district court shall thereupon have full jurisdiction of such cases, and the conditions of all undertakings therein shall apply to the orders and decrees of said district court, and from and after said time final judgments and orders of said superior court may be reversed, vacated, or modified by said district court in the same manner and by like proceedings as judgments and orders of the court of common pleas.

SECTION 9. This act shall take effect on the first Monday of October, A.D. 1878.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed May 10, 1878.

[Substitute for Senate bill No. 4.]

AN ACT

Supplementary to an act "to amend, revise, and consolidate the statutes relating to crimes and offenses, and to repeal certain acts therein named, to be known as title one, crimes and offenses, part four of the act to revise and consolidate the general statutes of Ohio," passed May 5, 1877, vol. 74, p. 240.

Unlawful to pay wages in scrip, check, draft, etc., payable otherwise than in money.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That it shall be unlawful for any person, firm, company, or corporation to issue or use any scrip, token, check, draft, or certificate of indebtedness, payable otherwise than in money in the payment of or accounting to any person for the wages of work and labor.

Unlawful to issue or circulate same.

SECTION 2. It shall be unlawful for any person, firm, company, or corporation to issue, use, or circulate, or cause to be issued, used, or circulated any check, token, promise in writing, or evidence of indebtedness, designed, intended, or calculated to be circulated or issued as money or in lieu of money, other than lawful money of the United States.

Penalty.

SECTION 3. Any person or persons offending against any of the provisions of this act, shall be held guilty of a misdemeanor, and upon conviction thereof before any court of competent jurisdiction, shall be fined in any sum not less than ten dollars nor more than one hundred dollars.

SECTION 4. This act shall take effect from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed May 10, 1878.

[Senate Bill No. 148.]

AN ACT

Relating to offenses against chastity and morality.

Sexual intercourse of superintendent or teacher with pupil —how punished.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That if any male person over twenty-one years of age, who is superintendent, tutor, or teacher in any private or public school, or seminary, or public institution, or instructor of any female in music, or any branch of learning, shall have sexual intercourse at any time or place, with any female, with her consent, while under his instruction, during the term of his engagement as superintendent, tutor, or instructor, shall be imprisoned in the penitentiary not more than ten y· ars nor less than one year, but in such case the evidence of the female must be corroborated to the extent required as to the principal witness in cases of perjury.

SECTION 2. This act to take effect and be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed May 10, 1878.

[Senate Bill No. 7.]

AN ACT

To authorize certain courts to appoint stenographers.

In certain counties stenographic reporters to be appointed by judges of the court of common pleas.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That it shall be the duty of the judges of the courts of common pleas in all counties in this state containing cities of thirty thousand inhabitants or over, by the census of the United States taken in the year 1870, to appoint two stenographic reporters, who shall be skilled in their profession, to be the official stenographers of such courts, who shall hold their office for the term of three years from the date of their appointment and until their successors shall be appointed and qualified, unless they, or either of them, shall be removed by said judges for neglect of duty, misconduct, or incompetency, and where there now is or hereafter may be a superior court in such county, the judges of such court and of the court of common pleas in such county shall jointly make the appointments therein provided for.

Official stenographers, when so appointed, shall be ex-officio the stenographers of the district and probate courts of such counties, and the superior courts of such cities siting in general term.

Such official stenographers shall take an oath for the faithful discharge of the duties of their office. Their oath.

SECTION 2. Upon the trial of any cause in any of said courts, if either party to the suit, or their attorney, shall request the services of the official stenographers, the presiding judge may, in his discretion, or upon his own motion, order a full report of the testimony or other proceeding, in which case it shall be the duty of the official stenographer to cause accurate short-hand notes of the oral testimony or other proceedings to be taken, which notes shall be filed in the office of the official stenographers, and preserved: provided, that before such order shall be made, upon application to the court by either party, the plaintiff or defendant requesting the services of such official stenographer shall be required, as a condition precedent, to pay or secure to be paid, the per diem fees, as hereinafter provided for. When party requests it, the court may order a full report of the testimony. Duty of official stenographer in such case.

The fees of the official stenographers for attendance in court and taking notes, as provided in this section, shall be not exceeding ten dollars per diem for each day actually employed in taking notes, which fees shall be paid out of any funds not otherwise appropriated in the treasury of the county in which said courts are held. And the clerk of said court shall certify the number of days of attendance of said official stenographers, in such cases, which certificate shall be a sufficient voucher to the auditor of the county, upon which he shall draw his warrant upon the treasurer of said county, and when so paid, such fees shall be taxed and collected as other costs in the case. Fees of stenographers, and how paid.

Where short-hand notes have been taken in any cause, as provided in this section, if the court or either party to the suit, or their attorney, shall request a transcript of the said notes into long-hand, it shall be the duty of said official stenographers to cause full and accurate transcripts to be made of the testimony or other proceeding, which shall be filed with the clerk of the court where such cause is tried, for the use of the court or parties. Transcripts of testimony to be furnished to party if requested.

The fees of the official stenographers for making such transcripts shall be eight cents per folio of one hundred words, and shall be paid forthwith by the party or parties for whose benefit the same is ordered, and when paid, shall be taxed as other costs in the case: provided, that all transcripts made in criminal causes, and transcripts ordered by the court, where not asked for by the parties, shall be paid out of the county treasury, in the manner provided in this section for the payment of fees for taking short hand notes. Fees of stenographers for transcripts.

SECTION 3. Stenographers appointed under the provisions of this act, shall have their office in the court-house of the county where they are appointed, and may be appointed referees to take and report proof in causes pending in said courts, and shall have power to swear witnesses, and to take and certify depositions in any of the courts in this state, and Stenographers to have office in court-house, and may be appointed referees to to take and report evidence, etc.

shall have power to employ such number of assistant stenographers as the necessities of their office may require.

SECTION 4. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed May 10, 1878.

[Senate Bill No. 11.]

AN ACT

To establish the Girls Industrial Home and to repeal certain acts therein named.

School for instruction and reformation of girls.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That there shall be maintained on land heretofore conveyed to the state of Ohio for the purpose, a school for the instruction, employment, and reformation of evil-disposed, incorrigible, and vicious girls, to be called the Girls Industrial Home, and the government of said school shall be vested in a board of five trustees to be appointed and commissioned by the governor forthwith by and with the advice and consent of the senate, whose term of office shall be one for one year, one for two years, one for three years, one for four years, and one for five years, and until their successors are appointed one of whom shall be a resident of the county where the home is located. If any vacancy shall occur in said board by resignation or otherwise, during the recess of the general assembly, it shall be the duty of the governor to fill said vacancy by appointment, and the person so appointed shall hold his office until the next session of the general assembly and for twenty days after the commencement of said session. The trustees shall receive no compensation for their services, but shall be paid their necessary expenses by the state treasurer on the order of the auditor.

Trustees, how appointed.

Oath and organization of trustees.

SECTION 2. Before entering upon the discharge of their duties, they shall take and subscribe to an oath or affirmation, to obey the constitution of the United States and of the state of Ohio, and faithfully to discharge the duties of their office, which shall be recorded in their journal. They shall organize by electing a president and secretary, who shall be of their number, and a treasurer who may or may not be of their number. The treasurer, before entering upon the discharge of the duties of his office, shall give a bond in the sum of ten thousand dollars, with good and sufficient sureties, to be accepted by the governor and deposited with the treasurer of state, conditioned for the faithful discharge of his duties as treasurer, and that he will properly account

Treasurer of board to give bond.

for all moneys that may come into his hands by virtue of his office.

Duties of trustees.

SECTION 3. The trustees shall take charge of the general interests of the institution; shall see that its affairs are conducted in accordance with the requirements of the legislature, and of such by-laws as they may from time to time adopt, (subject to the approval of the governor) for the orderly and economical management of its concerns; they shall see that strict discipline is maintained therein; shall provide employment for the inmates, and bind them out, discharge or remove them as hereinafter provided. They shall appoint a superintendent, who shall hold his office for three years unless sooner removed by them for cause, and such other officers to be nominated by the superintendent as in their judgment the wants of the institution may require, and prescribe their duties, remove them at pleasure, appoint others in their stead, determine their salaries respectively, and exercise general supervision over the institution. A majority of said board shall constitute a quorum.

Superintendent and other officers.

Committee of visitors to be appointed by governor.

SECTION 4. The governor shall appoint a committee of visitors for said girls industrial home, which shall consist of three women, one of whom shall be a resident of the county in which such home is located, whose term of service shall be for three years, and until their successors are appointed. The said committee shall receive no compensation for their services, but shall be paid their necessary expenses by the state treasurer on the order of the auditor. Any vacancy in said committee, by resignation or otherwise, shall be filled by appointment of the governor.

Organization of committee, their duties, etc.

SECTION 5. Before entering upon the discharge of their duties, the said committee shall organize by electing a president and secretary, who shall be of their number. The said committee shall visit the home as often as once in every three months, shall then make a thorough examination as to the general welfare and condition of the girls and the workings of the institution, and at their earliest convenience they shall make a written report of the results of their visits, with such recommendations as they may deem advisable; said report shall be under seal, and addressed to the president of the board of trustees; said board of trustees shall cause said report of the committee of visitors to be spread in full upon their minutes, at their next regular meeting.

Report of committee.

Salaries, and how paid.

SECTION 6. All salaries shall be paid quarterly, on the certificate of the president of said board of trustees, by an order drawn by the auditor of state on the state treasury, and all money for building purposes or current expenses shall be drawn in like manner, but not more than two thousand dollars shall be drawn at any one time from the state treasury. Said board shall report annually to the governor on or before the first day of December. The said report shall contain full and detailed accounts of all payments made and moneys received, and the true condition of the institution;

Annual report, what to contain.

which report, together with the report of the superintendent and treasurer, the governor shall have printed, and shall transmit the same to the general assembly. No trustee, superintendent, officer, or employé of said institution shall be interested in any sale, trade, or business carried on in said institution, and for any violation of this provision such officer or employé shall be subject to a fine of not less than one hundred dollars, nor more than one thousand dollars, and be removed from office.

Legacies, devises, etc.

SECTION 7. The said board of trustees shall receive and hold, or invest all legacies, devises, bequests, or donations made to the home, of every description, in behalf of the state, for the purposes of this act.

Board to direct general management of farm.

SECTION 8. It shall be the duty of said board to direct the general management of the farm, as regards its productions, mechanical, agricultural, and horticultural, and for this purpose may employ suitable superintendents to superintend the different producing interests prosecuted on said farm, but no provisions contained in this act shall be so construed as to authorize the letting of the labor of any of the inmates of the institution to any person or persons for the purpose of manufacturing, but said labor shall be employed by the superintendent exclusively in the interests of the institution.

Superintendent to keep accounts of institution.

And the superintendent shall cause the accounts of the institution to be so kept that the profits over and above the expense of maintaining the school, can be ascertained, and when thus ascertained, the board of trustees shall fund such annual profits of the institution for distribution among the girls, in shares to be paid to the girls, pro rata, when either of them may be honorably discharged from the institution. They shall also see that such productions as are not needed by the institution are sold to the best advantage. The value of all productions, whether used or sold, shall be duly accounted for in the annual report.

Disposition of girl brought before probate court, etc.

SECTION 9. Whenever any girl above the age of nine and under the age of fifteen years, shall be brought by any constable or public officer, or other inhabitant of any town, or city, or township of any county in this state, before any probate court of the proper county, upon the allegation or complaint under oath that said girl has committed any offense known to the laws of this state punishable by fine and imprisonment, other than such as may be punished by imprisonment for life, or that she is leading a vicious or criminal life, it shall be the duty of said probate judge to forthwith issue an order in writing addressed to the father of said girl if he be living and resident of the town, township, or city where said girl may be found, and if not, then to her mother, if she be living and so resident; and if there be no father or mother resident as aforesaid, then to her guardian, then to the person with whom the girl shall reside, which order shall require said father, mother, guardian, or other

person, as the case may be, to appear before said probate judge, at some time and place to be therein named, to show cause, if any there be, why said girl shall not be committed to the industrial home for girls, heretofore established and reorganized by this act, and upon the appearance of the party named in said order, or failure to appear upon the expiration of the time named in the order of said appearance, said judge shall proceed to examine said girl and party, and hear such testimony as may be presented before him in relation to the case, and should it appear to the satisfaction of the judge aforesaid that the girl is a suitable subject for the industrial home he shall commit said girl to the same, and for that purpose he shall issue his warrant to the sheriff of the proper county, or to some suitable person to be appointed by him, commanding him to take charge of said girl, and deliver her without delay to the superintendent of said home, and the fees of said probate judge, sheriff, and other costs incurred in said proceedings, shall be the same as are paid in similar cases under the laws now in force, and shall be paid by the proper county in the same manner: provided, that nothing in this act shall be construed to prevent any girl arrested for crime from demanding a trial by jury, and when any such demand is made, by or in behalf of such girl, the probate judge is hereby authorized after an examination of the case, in his discretion, to either discharge her or cause her to enter into a recognizance for her appearance before the court of common pleas of the county, forthwith, if said court be in session, and if not in session, then at the first day of the next term thereof, to answer to such charge, and in default of such bail, to commit her to the jail of the county until the first day of said next term of common pleas court, or until discharged by due course of law, and shall forward to the clerk of said common pleas court a transcript of his proceedings in the case; and shall also cause such witnesses as may appear against her before him, to be recognized to appear at the said term of common pleas court to give evidence against her.

Fees.

Proviso as to trial by jury.

SECTION 10. Any girl duly committed to said home shall there be kept, disciplined, instructed, employed, and governed, under the direction of the said board of trustees, until she be either reformed and discharged, or shall be bound out by said trustees, according to their by-laws, or shall have attained the age of eighteen years: provided, that the trustees shall have the right to discharge and return to the parents, guardian, or protector, any girl, who, in their judgment, ought for any cause to be removed from said home, and in such case the trustees shall enter upon their records the reasons for her discharge, a copy of which record, signed by their secretary, shall be forthwith transmitted to the probate judge by whom the girl was committed.

Detention, discharge of girls committed.

SECTION 11. Whenever any girl between the ages of nine and fifteen shall be brought before any court of criminal jur-

Proceedings when girl between the ages of nine and fifteen is charged with criminal offense.

isdiction, charged with any offence, punishable by fine or imprisonment, other than imprisonment for life, and if found guilty would be a proper subject for commitment to said home, an order to that effect shall be entered on the records of the proceedings of said court, and thereupon it shall be the duty of said court by warrant in due form of law, or order to cause such girl to be forthwith taken before the probate judge of the proper county, and transmit to said probate judge the complaint and indictment, or warrant, by virtue of which she shall have been arrested, and thereupon the probate judge shall proceed in the same manner as if she had been brought before him upon original complaint, as is provided in this act.

Girls may be apprenticed by trustees.

SECTION 12. The trustees may bind out as an apprentice or servant, any girl committed to their charge, for a term not longer than until she arrives at the age of eighteen years, and the person to whom the girl is bound, shall, by the terms of the indenture, be required to report to the trustees as often as once in six months, her conduct and behavior, and whether she is living under his care, and if not, where she is.

As to transfer of indentures.

SECTION 13. A person receiving an apprentice under the provisions of the last section of this act, shall not assign or transfer the indenture of apprenticeship, nor let out her services for any period without the consent in writing of the trustees. If the person, for any cause, desires to be relieved from the contract, the trustees, upon application, may in their discretion cancel the indenture and resume the charge and management of the girl, and have the same power and authority in regard to her as before the indenture was made.

In case of ill treatment, apprentice to be discharged from service and returned to home.

SECTION 14. If the person is guilty of cruelty or misusage toward the girl so bound to service, or any violation of the terms of the indenture, the girl or trustees may make complaint to the probate judge of the proper county, who shall summon the parties before him, and examine into the complaint, and if it appear to be well founded, he shall, by certificate under his hand, discharge the girl from all obligations of future service, and restore her to the home, to be managed as before her indenture.

Trustees to be guardian of apprenticed girl.

SECTION 15. The trustees shall be the guardians of every girl so bound or held to service, and shall take care that the terms of the contract are faithfully fulfilled, and that she is properly treated, and shall cause any grievance to be redressed.

Superintendent with subordinate officers to have general charge of girls, etc.

SECTION 16. The superintendent, with such subordinate officers as the trustees may appoint, shall have the general charge and custody of the girls. He shall be a constant resident at the home, and under the direction of the trustees, shall discipline, govern, instruct, and employ, and use his best endeavors to reform, in such manner as shall, while preserving their health, and promoting the proper development of their physical system, secure the formation, as far as possible, of moral and industrious habits, and regular thorough

progress and improvement in their studies, trades, and employments.

His bond, responsibility, etc.

SECTION 17. He shall, before he enters upon the duties of his office, give bond to the state of Ohio, with sureties satisfactory to the trustees, in the sum of ten thousand dollars, conditioned that he shall faithfully perform all his duties and account for all moneys received by him as superintendent, which bond, when approved, shall be filed with the treasurer of state. He shall have charge of all property pertaining to the home within the precincts thereof, and shall keep in suitable books, complete accounts of all his receipts and expenditures, and of all property entrusted to him, showing the income and expenses of the institution, and shall account to the treasurer in such manner as the trustees may require, for all moneys received by him. His books, accounts, and documents relating to the home, shall at all times be open to the inspection of the trustees. He shall keep a register, containing the name and age of each girl, and as far as possible, the circumstances connected with her history prior to the time of her admission to the home, and he shall add thereto such facts as may come to his knowledge relating to her history while at the institution, and after leaving it.

To keep books, accounts, register, etc.

Contracts, how made, etc.

SECTION 18. All contracts on account of the institution shall be made by the superintendent in writing, and approved by the trustees, if their by-laws require it, and the superintendent or his successor may sue thereon, to final judgment and execution. No suit shall abate by reason of the office of superintendent becoming vacant, but any successor in office may take upon himself the prosecution or defense thereof, and upon motion of the adverse party, and notice, he shall be required to do so.

Trustees to examine home.

SECTION 19. Once in every three months, the home, in all its departments, shall be thoroughly examined by a majority of the trustees.

Salary of superintendent and matron.

SECTION 20. The salary of the superintendent shall be at the rate of twelve hundred dollars per annum, and of the principal matron, four hundred dollars per annum.

No debts to be contracted in excess of appropriation.

SECTION 21. No trustee, superintendent, officer, or employé connected with the institution, shall contract any debts for the institution in excess of the appropriation, and for any debt thus contracted, said trustee, officer, or employe, shall be liable in his individual capacity.

SECTION 22. This act shall take effect and be in force from and after its passage, and the act entitled an act to establish a reform and industrial school for girls, passed May 5th, 1869, is hereby repealed, and the act to change the name of the state reform and industrial school for girls, passed April 29th, 1872, is hereby repealed.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JAMES W. OWENS,
Passed May 10, 1878. *President pro tem. of the Senate.*

[House Bill No. 72.]

AN ACT

To reorganize the asylum for the blind.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio—*

SECTION
1. Board of trustees—number, term, and residence.
2. Appoint[ment] and removal of steward.
3. His bond and its record.
4. Appointment of superintendent, etc.; salaries.
5. General powers and duties of the board, and their annual report.
6. Steward's accounts, and their settlement.
7. Duty of auditor of state as to balance-sheet of settlement.
8. When supplies shall be procured by public letting.

SECTION
9. Power of removal.
10. Superintendent—his qualifications, powers, and duties.
11. Duties of matron.
12. Moneys advanced to steward, and his accounting therefor.
13. Who may be received as pupils.
14. Age of pupils, and how long they may remain; and as to non-resident pupils.
15. Support of pupils and their incidental expenses.
16. Books, maps, etc., for the blind, may be purchased and distributed.

Trustees, how appointed; their terms and residence.

That within a reasonable time after the passage of this act, the governor, with the advice and consent of the senate, shall appoint a board of trustees for the institution for the education of the blind, consisting of five persons, one only of whom shall be resident of the county in which said institution is located, one of whom shall serve for one year, one for two years, one for three years, one for four years, and one for five years, and as their respective terms of service shall expire, their successors shall be appointed for the term of five years, in the manner herein provided. In case vacancies shall occur in said board the governor shall have power, as herein provided, to fill such vacancies for the unexpired term thereof, and if the senate be not in session at the time, he shall submit such appointment to the senate for its approval on or before the third Monday of its next session.

Trustees and other officers to take oath.

Before entering upon their respective duties each of said trustees, steward, physician, superintendent, and matron, herein provided for, shall take and subscribe an oath or affirmation to support the constitution of the United States, and of the state of Ohio, and also faithfully and honestly to discharge all and singular the duties of such trust, and in all things to protect the interests of the state, to the best of his or her skill and ability, which oath shall be filed in the office of the governor.

Trustees allowed their necessary expenses.

Said trustees shall perform their duties gratuitously: provided, they shall have their necessary expenses paid during the time they are actually engaged in the discharge of their official duties, such payment to be made by the steward, and carried into his monthly account.

SECTION 2. The board of trustees shall appoint a steward

for said institution, who shall, unless sooner removed, hold his office for the period of three years, and until his successor is appointed and qualified; and as the term of office of steward expires, the board shall, in the same manner, fill vacancies, and shall have power at pleasure to remove the steward. [71 v. 87, sec. 2.]

Appointment of steward.

SECTION 3. Such steward shall, before entering on his duties, enter into a bond with the state of Ohio, with at least two good and sufficient sureties, to be approved by the attorney-general, in the sum of twenty thousand dollars, conditioned that he will faithfully and honestly perform the duties of his office, and pay over and account for all moneys and property that shall come into his hands by reason of his said office, belonging to the state or to any other person, which bond with his oath of office indorsed thereon, shall be filed in the office of the governor. [71 v. 87, sec. 3.]

Bond of steward.

SECTION 4. Said board of trustees shall appoint a superintendent for said institution, who shall hold his office for five years, unless sooner removed; and on the nomination of such superintendent said board may appoint a matron and physician and such teachers and assistants as they may deem advisable. They shall also fix the salary of the following officers, teachers, and employés, not to exceed the amount herein provided for: The superintendent twelve hundred dollars a year; the steward eight hundred dollars a year; the matron four hundred dollars per year; the assistant matrons three hundred dollars each per year; the house-keeper three hundred dollars per year; the principal teacher in the literary department seven hundred dollars per year. All other teachers in the literary department four hundred and fifty dollars each per year. The professor of music one thousand dollars per year. All other teachers of music three hundred dollars each per year. The teacher of bead work one hundred and fifty dollars a year. The foreman of broom shop six hundred dollars a year. The engineer one thousand dollars per year. The trustees shall fix all wages of labor not herein provided for; and they shall also prescribe rules and by-laws for the government of the institution.

Superintendent, matron, physician, etc., how appointed.

Salaries.

SECTION 5. It shall be the duty of said board of trustees, monthly, to visit the institution, and they shall, with the superintendent, examine the accounts of the steward, and each, including the superintendent, shall certify his approval or otherwise on the page with the monthly balances of said steward, and also on the duplicate monthly balance sheets hereinafter provided for. They shall make a record of their proceedings at all meetings, in a book to be kept for that purpose at the institution, by the secretary of the board, and each year they shall make a report to the governor of the condition and wants of the institution, which shall be accompanied by full and accurate reports of the superintendent, in which shall be stated, among other things, the names, wages, and time of each employé during the

Duties of trustees.

Annual report.

year. The said reports of the trustees shall contain a summary statement of all contracts entered into during the year, and the names of all persons interested in such contracts, also the articles, quantity, and price of each, and from whom purchased; special meetings of the board may be held on a call of the president thereof: provided, each member shall have at least three days' notice thereof in writing, together with a statement of the object for which the meeting is called. [71 v. 87, sec, 5.]

Duties of steward.

SECTION 6. The steward shall keep a full and true account of receipts, and an itemized account of all disbursements, in a proper book, always open to the inspection of the superintendent and trustees, and shall balance the same on the fifteenth day of each month, and he shall prepare and have ready at the same time, in duplicate, a balance-sheet showing the amount of money received during the preceding month, and the balance on hand at the commencement thereof, and also a full and itemized account of all expenditures and payments during the same period, and a summary of all contracts entered into, with the name of each person interested therein; and he shall also take and arrange according to the entry in such duplicate balance-sheets, all vouchers and receipts for all disbursements during said month. After the said duplicate and balance-sheets shall have been indorsed by the superintendent and board of trustees, the steward shall, within two days thereafter, file said duplicate and vouchers pertaining thereto in the office of the auditor of state; and he shall take and subscribe an oath, to be indorsed on each of said duplicate balance-sheets, that the said account is a full, true, and correct account of his said stewardship for the preceding month, to the best of his knowledge and belief. [71 v. 87, sec. 6.]

Duty of auditor of state as to account of steward.

SECTION 7. The said auditor of state shall carefully examine said account and compare the same with the vouchers, and see that the footings of figures are correct; and he shall have full power and authority, at any time, to examine the said steward under oath touching his account; and if he think proper to do so, he may reduce such examination to writing and require the steward to sign the same, and such examination shall then be filed with papers of the proper monthly settlement. After having made the necessary examination, the auditor of state shall indorse his finding and approval, or otherwise, on each of said duplicate balance-sheets, one of which he shall forthwith file in the office of the governor, and the other, together with the vouchers, shall be filed and safely kept in the office of said auditor of state. Said steward shall not be credited with disbursements by the trustees, or superintendent, or auditor of state in his monthly account, to an amount above ten dollars in the aggregate in any one month, unless the same is accompanied with a

proper voucher therefor, and itemized account thereof. [71 v. 87, sec. 7.]

Stewards to make contracts and purchases.

SECTION 8. Said steward shall make all contracts on behalf of, and all purchases for, such institution, where they can be made on the best terms, keep the accounts, pay those employed in and about the institution, take vouchers for all expenditures, have a personal superintendence of the garden and ground, and perform such other duties as may be assigned him by the board of trustees, or superintendent, and under the direction of the superintendent and not otherwise, he may make engagements with, and discharge those employed in and about the institution. Whenever, in the opinion of the board of trustees, more than five hundred dollars' worth of any one article will be needed for the use of the institution during any one year, then it shall be the duty of said board to advertise for sealed bids to furnish at the institution such articles, at such times, and in such quantities as the steward may, from time to time direct, each bid to be accompanied with a bond in such amount as the board may direct, with good and sufficient surety that such bidder, if the contract be awarded to him, will fulfill and perform the contract on his part, and all such contracts shall be awarded to the lowest bidder. The board shall have power to reject all bids and re-advertise, or direct the steward to purchase by private contract: provided the price paid shall be less than the lowest bid received under said advertising; and when, in the opinion of a majority of the trustees, any articles, provisions, or supplies needed for the institution can be more economically purchased by private contract, the trustees may authorize the steward to buy the same without a letting to the lowest bidder, under such rules and regulations as the trustees may prescribe. [73 v. 246, sec. 9.]

Trustees to advertise for bids in certain cases.

Trustees may remove officers for cause.

SECTION 9. The board of trustees may at pleasure remove any matron or physician, and they may remove the superintendent also, for incompetency, gross neglect of duty, or refusal to discharge the duties devolving upon him, or for any misconduct which renders it improper for him longer to continue at the head of the institution, and may direct the discharge of a pupil, teacher, or employé, when they shall deem it expedient. [71 v. 87, sec. 10.]

Qualification and duties of superintendent.

SECTION 10. The superintendent of the institution shall be a person of acknowledged skill and ability in his profession, and shall sustain a good moral character, and shall hold his office for the term of five years, unless sooner removed by the board of trustees. He shall have entire control of the moral and dietetic treatment of the inmates and pupils, and shall see that the several officers and employés in the institution faithfully and diligently discharge their respective duties. He shall employ or direct the employment of attendants, nurses, servants, and such other persons as he may deem necessary for the efficient and economical management

of the institution, assign them their respective places and duties, and may at any time discharge, or direct the steward to discharge, any of them from service. The superintendent, steward, and matron shall devote their entire time to the interests of the institution. [71 v. 87, sec. 12.]

Duties of matron.

SECTION 11. The matron, under the direction of the superintendent, and not otherwise, shall have the general supervision of the domestic arrangements of the institution, and do what she can to promote the comfort and welfare of its inmates. [71 v. 87, sec. 13.]

Treasurer of state may advance not exceeding $2,000.

SECTION 12. The treasurer of state may, from time to time, advance to the steward, on his own order, approved by the superintendent and a majority of the board of trustees, on a warrant from the auditor of state, a sum not exceeding two thousand dollars to meet current expenses; and he shall account for the whole sum of two thousand dollars before another order is approved. [71 v. 87, sec. 15.]

What persons to be admitted to the asylum.

SECTION 13. The trustees are authorized to receive into the institution such blind and purblind persons residents of the state, as they and the superintendent are satisfied from reliable information and examination are persons suitable in age and mental capacity to receive instruction by the methods therein pursued: provided, no person shall be received who is addicted to immoral practices, or affected with any contagious or offensive disease. The superintendent, subject to the trustees, may reject or discharge from the institution, any person who has sight sufficient to read common print continuously. [73 v. 111, sec. 9.]

Rules for admission of pupils.

SECTION 14. Those admitted as regular pupils must be at least six years of age, and none shall be admitted under eight years of age, except for special reasons. Pupils admitted under the age of fourteen years may remain until the age of twenty-one years, and pupils admitted between the age of fourteen and twenty-one may remain for a period of seven years, if in the judgment of the trustees or the superintendent, under their direction, the character, progress, capacity, and conduct of the pupil in each case justify so long a pupilage. Persons over twenty-one years of age may be received for one year, for the purpose of learning any trade or employment taught in the mechanical department; and they may also receive instruction in one or more studies, if this can be done without interfering with the purpose for which they are admitted. In addition to the one year specified for those over twenty-one years of age, females over twenty-one years of age may be allowed to remain three years more, if their capacity shall render it advisable: provided, that the superintendent, subject to the trustees, may permit former pupils, for a period not exceeding a year, to return to the institution for the purpose of reviewing or perfecting their studies, but not at an age beyond the oldest period provided for in this act. The trustees, upon the recommendation of the superintendent, may,

at any time, for sufficient cause, terminate the course of any pupil, and the superintendent shall have authority, subject to the trustees, to dismiss any pupil for persistent disobedience, immoral conduct, or other cause, that renders the person unfit to remain in the institution. Nothing herein contained shall be construed to prohibit the admission of pupils who are not residents of Ohio, if there shall be accommodation therefor, upon the payment of such sums and upon such terms as the trustees may determine; and the money so received from pupils not residing in this state shall be paid over to the steward, receipted for by him, and by him certified into the state treasury to the credit of the general revenue fund. It shall be the duty of such steward to make a correct record of all such moneys received by him in a book to be prepared for that purpose, which record shall be open for the inspection of any person wishing to examine the same. [73 v. 111, sec. 10.]

Trustees may terminate course or dismiss pupil

Terms of admission for non-residents.

SECTION 15. All pupils admitted into the institution who have a legal residence in the state shall be supported at the expense of the state: provided, that parents or guardians of such pupils shall be required to keep them comfortably and neatly clothed, and to pay their traveling and incidental expenses. If able so to do, parents and guardians shall be required, for incidental expenses, to deposit with the steward the sum of five dollars. If parents, guardians, or any adult pupils shall neglect or fail to pay said expenses, or to furnish the requisite clothing, the steward of the institution is hereby authorized to pay such expenses and furnish the requisite clothing, and pay for the same out of the appropriation for the current expenses of the institution, keeping and reporting a separate account of the same. The account so drawn up, signed by the steward, countersigned by the superintendent, and sealed with the seal of the institution, shall be forwarded to the auditor of the county from which the pupil came, who shall pay the amount of said bill out of the county funds to the steward of the institution, to be audited to the current expense fund, and said auditor shall then proceed to collect the same, in the name of the state of Ohio, as other debts are collected. [73 v. 111, sec. 11.]

Pupils to be supported at expense of state.

Proviso.

SECTION 16. The trustees are authorized to expend any amount not exceeding six hundred dollars, annually, for the purchase of books, maps, and other educational appliances, from the American printing house for the blind, out of the appropriations for current expenses, for the use of the institution, and gratuitous distribution among the indigent blind of the state: provided, the purchase can be made from said printing house at a price not exceeding the exact cost of their production. [71 v. 10, sec. 1.]

Trustees to purchase books.

SECTION 17. All books, papers, vouchers, and contracts pertaining to this institution shall be the property of the state, and shall be carefully preserved.

Books, papers, vouchers, etc., to be preserved.

Gifts, bequests, devises, etc.

SECTION 18. The board of trustees shall be capable of receiving, by gift, devise, or bequest, moneys, lands, or other property for the benefit of this institution, or any of its inmates, and to hold and apply the same according to the terms of the donation.

Trustee or officer interested in contracts to be removed.

SECTION 19. No trustee or officer of this institution shall be, either directly or indirectly, interested in any purchase for, or contract on, behalf of this institution; and in addition to the liability of any trustee, or officer, violating this inhibition to respond in damages for any injury sustained by the institution by his act, he shall be forthwith removed from office.

SECTION 20. No trustee of this institution shall be eligible to the office of superintendent or steward of such institution during the term for which he was appointed, nor within one year after such term shall have expired.

SECTION 21. Claims due to the institution may be sued for in the name of the institution.

SECTION 22. The following acts and parts of acts are hereby repealed:

Repeals.

1. "An act to provide for the more economical management and better regulation of the institution for the blind, and to repeal certain acts therein named." (Volume 71, page 87.)

2. "An act relating to the purchase of books, maps, and other educational appliances for the blind. (Volume 71, page 10.)

3. "An act to amend section nine of an act to provide for the more economical management and better regulation of the institution for the education of the blind." (Volume 73, page 246.)

4. "An act to amend section ten of an act entitled an act to amend sections two and ten of an act entitled an act to reorganize the institution for the education of the blind, and to repeal certain laws heretofore passed and took effect April 6, 1866," passed March 10, 1873.

SECTION 23. This act shall be in force from and after its passage; but the present officers of said institution shall retain their place until their successors are appointed and qualified.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed May 10, 1878.

[Senate Bill No. 101.]

AN ACT

To amend section three of "an act to provide for the more prompt and efficient collection of claims due the state." (S. & C., v. 2, page 1233.)

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That section three of the above recited act be so amended as to read as follows:

Section 3. The auditor of state shall keep an accurate account of such claims so reported to him, and shall give immediate notice, by mail or otherwise, to the party indebted, of the nature and amount of such indebtedness, and if payment thereof be not made in reasonable time, not exceeding sixty days after such notification, the auditor of state shall file such claim with the attorney-general, who shall, without further delay, institute proceedings for the collection of such claims, and prosecute the same to final judgment and execution; and all claims shall bear interest at the rate of six per cent. per annum from the date at which they respectively fell due, until payment be made.

Auditor of state to file claim with attorney-general, who shall bring suit without delay.

Provided, that whenever an offset or abatement shall be set up by the party against whom the claim exists, the attorney-general and auditor of state, may adjust the same without the issuing of legal process, in such manner as they may deem equitable and right.

May adjust same without suit.

And provided further, that the auditor of state and the attorney-general shall have power to extend the time of the payment of any claim or judgment due the state for such period as may, in their opinion, subserve the best interests of the state, not to exceed one year, and shall take such security for the payment of any such claim so due as may be necessary to secure the same.

May extend time for payment.

SECTION 2. Said original section three is hereby repealed; and this act shall be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 11, 1878.

[Amended Senate Bill No. 6.]

AN ACT

To prescribe the duties of county commissioners in counties containing cities of the first-class having a population exceeding one hundred and eighty thousand.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That in each county in this state containing a city of the first-class, having a population exceeding one hundred

Commissioners of certain counties to provide blank-books, furniture, stationery, and rooms for meetings of board.

and eighty thousand, it shall be the duty of the board of county commissioners to provide suitable rooms in the courthouse of said county, in which to meet and transact its business; it shall also provide the necessary blank books in which to keep a daily journal of its proceedings, and in which to keep its records; and also to provide office furniture, fuel, and the stationery necessary for said board.

Organization and proceedings of board.

SECTION 2. A majority of the members shall constitute a quorum for the transaction of business. All proceedings of said board shall be public. It shall determine the rules of its proceedings, which shall be, as far as practicable, in accordance with parliamentary law. It shall keep a journal of its proceedings, which shall be open to public inspection during ordinary business hours, except when in use by said board. Said members shall elect from their own body, a president, who shall preside at their meetings, and whose term of office as such, shall end on the Saturday preceding the first Monday in December of each year. The members of said board shall perform the duties now required of them by law. They shall give their personal attention to all public works under their charge during construction, and at such other times as may be necessary. Each member shall receive compensation for his services actually performed, at the rate of $4.00 per diem, and such mileage and actual expense as are now allowed by law, and no compensation shall be allowed or paid to any member for time not actually employed in the service of the county. The board, by its rules, shall fix certain days of the week which shall be devoted to public sessions of the board, at which all members are required to attend. The county auditor shall be the clerk of the board and personally attend to the duties thereof; but if he refuses or neglects to do so, then the board shall elect a clerk, whose duty it shall be to keep an accurate daily journal of all proceedings of said board, and who shall make a record of proceedings required by law to be recorded and who shall file away all documents, maps, and papers, in alphabetical and numerical order, and carefully preserve the same, as well as preserve all journals and records belonging to said board.

Their duties and per diem.

Clerk of court, his bond and oath and duties.

SECTION 3. The clerk of such board of county commissioners, previous to entering upon the duties of his office, shall give a bond to the state of Ohio, with two or more sureties, to the acceptance of the probate judge of said county, in the penal sum of two thousand dollars, conditioned for the faithful discharge of the duties of his office, and shall take and subscribe to an oath or affirmation, to be indorsed on said bond, that he will faithfully and impartially discharge all the duties of his office, which bond shall be deposited with the treasurer of the county, who shall record and carefully preserve the same in his office. The clerk of said board shall hold his office at the pleasure of the

board, and shall be entitled to receive a salary, at the rate of eight hundred dollars per annum. He shall be provided with a seal of office, in the center of which shall be the name of the county, and around the margin the words, "Board of county commissioners." Transcripts, orders, and certificates, when duly certified to by the president of the board, and the clerk, with the seal attached, shall be received as evidence in any court of this state, and for the same, similar fees shall be paid the clerk as are allowed to county officers for like services, and all sums thus received shall be by said clerk entered in a book to be kept for that purpose, and the gross amount thus received shall by said clerk be paid into the county treasury, and credited to the fee fund: provided, however, that when any such transcripts, orders, and certificates shall be prepared on behalf of the county by order of said board of county commissioners, no fee shall be allowed.

Salary and fees of clerk.

SECTION 4. The county auditor in such counties shall aid the board of county commissioners in the performance of its duties, by his presence, advice, and information, which he is required to give in all matters pertaining to the duties of county auditor or county commissioners, when requested in writing by any member of said board. The county auditor in such counties, is required to perform all duties in aid of the board of county commissioners now required by law, except that he shall neither act as their secretary, nor appoint a deputy to act as such, nor have control of their books, documents, furniture, or office.

County auditor not to act as clerk of board.

SECTION 5. That all books, papers, plates, records, journals, petitions, and all other matters and things whatever, in any wise relating or appertaining to or necessary to the business of the board of county commissioners, and to county and state roads, free turnpikes, and all applications for road improvements and all accompanying papers now or heretofore in the custody or under the control of the county auditor of said county, or on file in the office of said auditor, shall immediately after the passage of this act be, by said county auditor, placed in charge of said board of county commissioners, to be kept by them in some convenient place in their office, open at all times to the inspection of the public.

County auditor to turn over certain books, papers to commissioners.

SECTION 6. That in all such counties, all plats, profiles, and surveys, on applications for road improvements, when the application fails and the county commissioners refuse to order the constructing of the road, shall be carefully preserved in the office of the board of county commissioners, and in case a new application for the same road, or any part of the same road be made, and said plats, profiles, or surveys, or any part thereof, be used by county commissioners (the authority to do which is hereby conferred on said board of county commissioners), the persons originally charged with the cost of the same, shall be paid for, all or such part or

Plats, surveys, etc., for road improvements to be kept in commissioner's office.

parts of said plats, profiles, or surveys as may be so used in the manner now provided by law.

SECTION 7. All acts and parts of acts in conflict with the provisions of this act are to be held and taken to be inoperative in such counties as contain a city of the first-class, having a population of one hundred and eighty thousand at the last federal census.

SECTION 8. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 11, 1878.

[House Bill No. 535.]

AN ACT

Requiring clerks of the courts of common pleas to provide poll-books and tally-sheets for elections.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That it shall be the duty of the clerk of the court of common pleas of each county in this state to furnish at his office, at the expense of the county, and at least five days before the day of election, all the necessary poll-books and tally-sheets required in each voting precinct in the county, for all presidential, congressional, state, and county elections.

SECTION 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 11, 1878.

[House Bill No. 41.]

AN ACT

To amend, revise, and consolidate the statutes relating to municipal corporations, to be known as title twelve, part one, of the act to revise and consolidate the general statutes of Ohio.

Be it enacted by the General Assembly of the State of Ohio:

TITLE XII.

MUNICIPAL CORPORATIONS.

DIVISION 1. General Provisions.

HEREIN OF THE ENLARGED MEANING OF CERTAIN WORDS, PUBLICATION OF NOTICES REQUIRED IN THE TITLE, GENERAL APPLICATION OF TITLE, RIGHT OF VISITATION, AND SAVING EXISTING RIGHTS.

DIVISION 2. Organization.

HEREIN OF CLASSIFICATION, FORMATION OF MUNICIPAL CORPORATIONS, ANNEXATION, MERGER OF TOWNSHIP, THE WARDS, ADVANCEMENT OR REDUCTION IN RANK, AND THE DUTIES OF STATE OFFICERS.

DIVISION 3. LEGISLATIVE DEPARTMENT.

HEREIN OF TRUSTEES, COUNCILS AND BOARDS OF ALDERMEN, AND THEIR GENERAL POWERS, WITH THE MODE OF PASSING RESOLUTIONS, ORDINANCES, AND BY-LAWS.

DIVISION 4. EXECUTIVE OFFICERS.

HEREIN OF OFFICERS OF MUNICIPAL CORPORATIONS, THEIR ELECTION, QUALIFICATION, OATH, BOND, AND FILLING VACANCIES; EXCEPT THE ELECTION OF TRUSTEES OF HAMLETS, MEMBERS OF BOARDS OF COUNCILMEN AND ALDERMEN, AND THE ELECTION AND APPOINTMENT OF OFFICERS OF THE POLICE DEPARTMENT AND OF MUNICIPAL BOARDS, WHICH ARE PROVIDED FOR IN OTHER DIVISIONS OF THIS TITLE.

DIVISION 5. POLICE DEPARTMENT.

HEREIN OF THE POLICE COURT, MAYOR'S COURT, POWERS OF PRESIDENT OF THE BOARD OF TRUSTEES AND JUSTICES OF THE PEACE IN HAMLETS, LIMITATION AS TO PUNISHMENT, POLICE COMMISSIONERS AND POLICE OFFICERS, STATION-HOUSES, CORPORATION PRISON, HOUSE OF REFUGE, WORK-HOUSE, AND VAGRANTS.

DIVISION 6. HEALTH DEPARTMENT.

HEREIN OF BOARDS OF HEALTH, AND POLICE COMMISSIONERS ACTING AS SUCH BOARDS, HOSPITALS, INFIRMARIES, AND NUISANCES.

DIVISION 7. IMPROVEMENTS.

HEREIN OF BOARD OF IMPROVEMENTS AND BOARD OF PUBLIC WORKS, APPROPRIATION OF PROPERTY, AND ASSESSMENT FOR STREETS, SEWERS, ETC.

DIVISION 8. PROPERTY OF THE CORPORATION, DEDICATION, RIGHTS OF THE PUBLIC AND PROPERTY OWNERS, AND AGENCIES OF CONVENIENCE AND NECESSITY.

HEREIN OF THE WATER-WORKS, FIRE DEPARTMENT, GAS COMPANIES AND LIGHT, RAILWAYS, PARKS, CEMETERIES, HALLS AND PLACES OF PUBLIC ASSEMBLAGES, MARKETS AND INSPECTION, PLATS AND PLATTING, STREETS, WHARVES AND DOCKS, THE LICENSE OF SHOWS, AUCTIONS, PAWN-BROKERS, AND FERRIES, THE SALE OR LEASE OF CORPORATE PROPERTY, AND OF EXCAVATIONS AND INJURIES THEREFROM.

DIVISION 9. FINANCE AND TAXATION.

HEREIN OF THE LIMITATIONS ON TAXATION, POWER TO BORROW MONEY AND ISSUE BONDS, AND OF THE SINKING FUND.

FIRST DIVISION.—GENERAL PROVISIONS.

CHAPTER 1.

GENERAL PROVISIONS; SAVING EXISTING RIGHTS; VISITATION, ETC.

SECTION
1. Meaning of certain words.
2. As to publication of notices.
3. General application of title; territorial limits unchanged.
4. Saving of actions, rights, and remedies.
5. Saving of rights with respect to justices and constables.
6. Saving as to power of appointment.
7. Terms of office of incumbents not affected.
8. Ordinances, etc., to remain in force.
9. Right of visitation.
10. Fiscal year.

Enlarged meaning of certain words.

SECTION 1. In the interpretation of this title, unless the context shows that another sense was intended, the word "village" shall mean incorporated village; "person" includes a private corporation; "writing" includes printing; "oath" includes an affirmation; "insane" and "lunatic" include every species of mental derangement; "bond" includes an undertaking; "and" may be read "or," and "or" read "and," if the sense requires it; words of the present include a future tense, in the masculine include the feminine and neuter genders, and in the plural include the singular, and singular the plural number; "council," in cities which have a board of aldermen, includes common council; "property" includes real, personal, and mixed estates and interests; and "land" and "real estate" include rights and easements of an incorporeal nature; but this enumeration shall not be construed to require a strict construction of any other words in this title.

As to publication of notices.

SEC. 2. Where in this title a notice is directed to be published in a newpaper, and no such paper is published at the place mentioned, or if such newspaper is published at the place, but the publisher refuses, on tender of his usual charge for a similar notice, to insert the same in his newspaper, then a publication in any newspaper of general circulation at such place, shall be sufficient; but nothing herein contained shall be construed to dispense with posters where they are provided for.

General application of title; territorial limits unchanged.

SEC. 3. Existing municipal corporations, and those hereafter created, shall be governed by the provisions of this title; and the territorial limits of such existing corporations, and the wards thereof, shall remain as they are, until changed in the manner herein provided. [66 v. 149, § 1.]

Saving of actions, rights, and remedies.

SEC. 4. All rights and property which were vested in any municipal corporation under its former organization, shall be deemed vested in the same municipal corporation under the organization made by this title; and no rights or liabilities, either in favor of or against such corporation, existing at the time of the taking effect of this title, and no suit, prosecution, or proceeding shall be in any manner affected by such change, but the same shall stand or proceed as if no such change had been made: provided, that where a different remedy is given in this title, which can be made applicable to any rights existing at the time of its passage, it shall be deemed cumulative to the remedies before provided, and may be used accordingly. [66 v. 272, § 725.]

Saving of rights with respect to justice and constables.

SEC. 5. Any municipal corporation which, under its former organization, held or exercised any power or duty, in ordering or directing the election of justices of the peace, constables, or other township officers, shall continue to hold and exercise such power and duty until otherwise provided by law. [66 v. 272, § 726.]

Saving as to powers of appointment.

SEC. 6. Any municipal corporation, in which is vested any power of appointing officers of supervision or control of any literary, charitable, or benevolent institution, shall continue to hold and possess the like power and authority in every respect. [66 v. 273, § 727.]

Passage of this title not to affect terms of office of incumbents.

SEC. 7. All officers elected by the people, or appointed, in any municipal corporation, and all officers of benevolent and other institutions, now in office, except as may be otherwise expressly provided in this title, or as may be otherwise provided by law, shall remain in their respective offices, and perform the several duties thereof, under the provisions of this title, until the time shall expire for which they were elected or appointed, and until their successors are chosen or appointed, and qualified; but all such officers shall be subject to such rules and regulations touching their duties and compensation, as the proper authority of any municipal corporation may provide. [66 v. 263, § 728.]

Ordinances, etc., to remain in force.

SEC. 8. All by-laws, ordinances, and resolutions heretofore lawfully passed and adopted by the trustees or council, and not inconsistent with this title, shall remain in force, until altered or repealed by the trustees or council established by this title. [66 v. 273, § 729.]

Right of visitation.

SEC. 9. The general assembly of Ohio by a committee, the governor of the state, the council of the corporation by a committee, the mayor or police judge of the corporation, the board of health of the corporation, the judge of any court of this state, and the grand jury of the county, may, at any time, visit and inspect any of the benevolent or correctiona

institutions established by any municipal corporation, and examine the books and accounts of the same. [66 v. 272, § 724.]

Fiscal year.

SEC. 10. In cities of the first class, the fiscal year of each office, department, board of trustees, directors, or commissioners, shall terminate on the 31st day of December, in each year, and all accounts shall be closed on that day, and all annual reports required by law shall be made for the year terminating on that day. [69 v. 20, § 1.]

SECOND DIVISION: ORGANIZATION.

CHAPTER 1. CLASSIFICATION; GENERAL POWERS.
CHAPTER 2. VILLAGES AND HAMLETS; HOW CREATED; CHANGE OF NAME.
CHAPTER 3. HAMLETS—MANNER OF ADVANCING TO BE VILLAGES.
CHAPTER 4. CITIES OF THE SECOND CLASS, HOW ADVANCED TO FIRST CLASS; VILLAGES, HOW ADVANCED TO CITIES OF THE SECOND CLASS.
CHAPTER 5. ANNEXATION: 1. OF TERRITORY ON APPLICATION OF ITS CITIZENS; 2. OF TERRITORY ON APPLICATION OF A CORPORATION; 3. OF ONE MUNICIPAL CORPORATION TO ANOTHER.
CHAPTER 6. DUTIES OF STATE OFFICERS AS TO ADVANCEMENT OR REDUCTION IN CLASS OR GRADE.
CHAPTER 7. MERGER OF TOWNSHIP IN CORPORATION.
CHAPTER 8. WARDS, HOW ESTABLISHED; CHANGE OF BOUNDARY.
CHAPTER 9. SURRENDER OF MUNICIPAL POWERS; REDUCTION IN CLASS, ETC.

CHAPTER 1.

CLASSIFICATION; GENERAL POWERS.

SECTION
1. Classification, general.
2. Cities of the first class.
3. Cities of the second class.
4. Villages.
5. Hamlets.
6. Population for organization or advance in rank.
7. General powers.

Classification, general.

SECTION 1. Municipal corporations are divided into cities, villages, and hamlets; cities are divided into two classes, first and second; cities of the first class are divided into three grades, first, second, and third; cities of the second class are divided into four grades, first, second, third, and fourth

cities of the second class, which hereafter become cities of the first class, shall constitute the fourth grade of the latter class; and villages, which hereafter become cities, shall belong to the fourth grade of the second class. [66 v. 149, § 2.]

Cities of the first class;

SEC. 2. Existing corporations, organized as cities of the first class, shall remain such, and their grades, and the grades of those which may be, or may become, cities of the first class, shall be determined as follows: those which, on the first day of July last, had, and those which hereafter, on the first day of July, in any year, have, according to an official report or abstract of the then next preceding federal census, more than two hundred thousand inhabitants, shall constitute the first grade; those which, on the first day of July last, had, and those which hereafter, on the first day of July, in any year, have, when ascertained in the same way, more than ninety thousand, and less than two hundred thousand inhabitants, shall constitute the second grade; and those which, on the first day of July last, had, and those which hereafter, on the first day of July, in any year, have, when ascertained in the same way, more than thirty-one thousand five hundred, and less than ninety thousand inhabitants, shall constitute the third grade. [66 v. 149, § 3.]

Cincinnati;

Cleveland;

Toledo.

Cities of the second class;

SEC. 3. Existing corporations, organized as cities of the second class, shall remain such until they become cities of the first class, and their grades, and the grades of those which may be, or may become, cities of the second class, shall be determined as follows: those which, on the first day of July last, had, and those which, on the first day of July, in any year, have, when ascertained in the way mentioned in the last section, more than thirty thousand five hundred, and less than thirty-one thousand five hundred inhabitants, shall constitute the first grade; those which, on the first day of July last, had, and those which, on the first day of July, in any year, have, when ascertained in the same way, more than twenty thousand, and less than thirty thousand five hundred inhabitants, shall constitute the second grade; those which, on the first day of July last, had, and those which, on the first day of July, in any year, have, when ascertained in the same way, more than ten thousand, and less than twenty thousand inhabitants, shall constitute the third grade; and those which, on the first day of July last, had, and those which hereafter, on the first day of July, in any year, have less than ten thousand, and more than five thousand inhabitants, shall constitute the fourth grade. [66 v. 149, § 4.]

First grade—Columbus;

Second grade—Dayton;

Third grade—Sandusky, Springfield, Hamilton, Portsmouth, Zanesville, Akron;

Fourth grade—all other cities.

Villages.

SEC. 4 Existing corporations, organized as incorporated villages, shall be villages until they become cities of the second class, and their grades, and the grades of those which may be, or may become, villages, shall be determined as follows: those which, on the first day of July last, had, and those which, on the first day of July, in any year, have,

when ascertained in the manner stated in section two, more than three thousand, and less than five thousand inhabitants, shall be villages of the first class; and all other municipal corporations having, when ascertained in the same manner, more than two hundred, and less than three thousand inhabitants, shall be villages of the second class: provided, however, that if before the first day of July, in any year, council determine it to be inexpedient that a municipal corporation should pass into any other class or grade, under the operation of this section, and the preceding sections two and three, such municipal corporation shall remain in the class or grade in which it then may be, until it is advanced under other provisions of this title; and provided further, that nothing contained in this, or the preceding sections two and three, shall prevent advancement in the mode contemplated in the sixth chapter of this division, if it be deemed by the council expedient to submit the question in the way contemplated in that chapter. [66 v. 149, § 5.]

Hamlets.

SEC. 5. Existing corporations, organized as incorporated villages for special purposes, shall be hamlets, until advanced to villages, in the manner provided in this title. [66 v. 149, § 6.]

Population requisite for organization or advance in rank.

SEC. 6. A city of the second class shall not be advanced to the first class until it attains a population of twenty thousand inhabitants; a village shall not be advanced to a city of the second class until it attains a population of five thousand inhabitants; a hamlet shall not be advanced to a village, nor shall a village be organized until it attains a population of two hundred; nor shall a hamlet be organized until its territory embraces fifty electors, except as provided in chapter two, section one, of this division. [70 v. 252, § 7.]

General powers.

SEC. 7. Municipal corporations, now or hereafter organized, are bodies politic and corporate, under the name of the city of ———, the village of ———, or the hamlet of ———, as the case may be; and as such they may sue and be sued, contract and be contracted with, acquire, hold, possess, and dispose of property, subject to the restrictions contained in other chapters of this title, have a common seal, and change or alter the same at pleasure, and exercise such other powers, and have such other privileges as are conferred by this title. [66 v. 150, § 8.]

CHAPTER 2.

VILLAGES AND HAMLETS—HOW CREATED.

SECTION
1. Right to incorporation — restrictions.
2. How application made.
3. Petition—what it shall contain.
4. Presentation to commissioners; time of hearing; notice.
5. Hearing before commissioners.
6. Order for organization.
7. Order to be entered on journal.
8. When recorder to make record.
9. Name; transcripts; judicial notice taken.
10. Injunction against recorder.
11. Proceedings in such case.
12. Hearing and decision.
13. Election of officers.
14. When territory embraces parts of more than one county.
15. Established and reviewed as in other cases.
16. Power of officers as in other cases.
17. Fees in advance.
18. Proceedings for change of name.
19. Power of court; costs; saving rights.

Right to incorporation—restrictions.

SECTION 1. The inhabitants of any territory, laid off into village or hamlet lots, a plat of which territory has been acknowledged and recorded, as is provided with respect to deeds, and the inhabitants of any island or adjacent islands, or parts thereof, or of such island or islands or parts thereof, and adjacent territory, may obtain the organization of a village or hamlet, in the manner provided in this title; but the territory of such village or hamlet shall not adjoin a city; and when such village or hamlet is organized upon any island or islands, it may be done without reference to the number of permanent inhabitants embraced within such territory, and without such plat having been first made; provided, that no corporation under this chapter shall embrace within its limits the ground or improvements of any county or city infirmary. [73 v. 165, § 9.]

How application made.

SEC. 2. Application for such purpose shall be made by petition, which, except as provided in the last preceding section, shall be signed by not less than thirty electors, residing within the proposed corporate limits, and addressed to the county commissioners; and the same shall be accompanied by an accurate map of the territory. [71 v. 65, § 10; 66 v. 150, § 11.]

Petition—what it shall contain.

SEC. 3. The petitions shall contain the matters following: 1. An accurate description of the territory embraced within the proposed corporation, and it may contain adjacent territory not laid off into lots; 2. The supposed number of inhabitants residing in the proposed corporation; 3. Whether the corporation desired is a village or hamlet; 4. The name proposed; and 5. The name of some person to act as agent for the petitioners, and more than one agent may be named therein. [66 v. 150, § 11.]

Presentation to commissioners.

SEC. 4. The petition shall be presented to the board of commissioners at a regular session thereof, and when so presented the board shall cause it to be filed in the office of the county auditor, where it shall be subject to the inspection of any person interested; and the commissioners shall then fix the time and place for hearing the petition, and communicate the same to the agent of the petitioners, which time shall not be less than sixty days after such filing; and thereupon the agent shall cause a notice, containing the substance of the petition, and the time and place where the same will be heard, to be published in some newspaper printed and of general circulation in the county, for the period of six consecutive weeks, and cause a copy of the notice to be posted in a conspicuous place within the limits of the proposed corporation, not less than six weeks prior to the time fixed for such hearing. [66 v. 150, § 12.]

Time of hearing.

Notice.

Hearing before the commissioners.

SEC. 5. The hearing shall be public, and may be adjourned from time to time, and from place to place, according to the discretion of the commissioners, and any person interested may appear, in person or by attorney, and contest the granting of the prayer of the petition, and any affidavits presented in support of or against the prayer of the petition shall be considered by the commissioners, and the petition may be amended by their leave; but if any amendment is permitted, whereby territory not before embraced is added, the commissioners shall appoint another time for the hearing, of which notice shall be given, as specified in the last preceding section. [66 v. 151, § 13.]

Orders for organization.

SEC. 6. If the commissioners, upon such hearing, find that the petition contains all the matters required, that its statements are true, that the name proposed is appropriate, that the limits of the proposed corporation are accurately described, and are not unreasonably large or small, that the map or plat is accurate, that the persons whose names are subscribed to the petition are electors residing on the territory, that notice has been given as required, that there is the requisite population for the proposed corporation, and if, moreover, it seems to the commissioners right that the prayer of the petition be granted, they shall cause an order to be entered on their journal to the effect that the corporation may be organized. [66 v. 151, § 14.]

Order to be entered on journal.

SEC. 7. The commissioners shall cause to be entered on their journal all their orders and proceedings in relation to such incorporation, and they shall cause a certified transcript thereof, signed by a majority of them, to be delivered, together with the petition, map, and all other papers on file, relating to the matter, to the recorder of the county, at the earliest time practicable. [66 v. 151, § 15; 66 v. 152, § 19.]

Papers filed with recorder.

When recorder to make record.

SEC. 8. The recorder shall file the transcript and other papers in his office, and at the expiration of sixty days thereafter, unless enjoined as hereinafter provided, he shall

make a record of the petition, transcript, and map in the proper book of records, and preserve in his office the original papers delivered to him by the commissioners, certifying thereon that the transcript, petition, and map are properly recorded. [66 v. 151, § 16.]

Name.

SEC. 9. When the record is made, the corporation shall be deemed the village of ———, or the hamlet of ———, as the case may be, to be organized and governed under the provisions of this title; and thereupon the recorder shall make, and certify under his official seal, two transcripts of the record, one of which he shall forward to the secretary of state, and the other deliver, on demand, to the agent of the petitioners, with a certificate thereon that the duplicate has been forwarded to the secretary of state; and when any municipal corporation is organized by the election of its officers, notice of its existence shall be taken in all judicial proceedings. [66 v. 152, §§ 17, 18.]

Transcript of record.

Judicial notice taken of corporation.

Injunction against recorder.

SEC. 10. Any person interested may, within sixty days from the filing of the papers with the recorder, as above provided, make application, by petition, to the court of common pleas, or, if during vacation, to a judge thereof, setting forth the errors complained of, or the inaccuracy of the boundaries, or both, and praying an injunction restraining the recorder from making the record and certifying the transcripts, as above required. [66 v. 152, § 20.]

Proceedings in such case.

SEC. 11. When the petition is filed, the person filing the same shall give notice thereof, in writing, to the recorder and the agent of the petitioners for the corporation; and the recorder, on receiving such notice, shall forthwith transmit to the clerk of the court where the petition for injunction is pending, all the papers relating to the matter on file in the recorder's office; and in that event, no record of the papers shall be made by the recorder, or transcript certified by him, as above provided, unless he receive a certificate from the clerk of the court, showing that the injunction has been denied. [66 v. 152, §§ 21, 22.]

Hearing and decision of the case.

SEC. 12. The court or judge shall hear the petition in a summary manner, and may hear evidence, and if no error is found in the proceedings, and no inaccuracy in the boundaries, the petition shall be dismissed, and thereupon the clerk shall return the papers to the recorder, with a certified transcript of the order of the court, and the recorder shall then immediately record the transcript certified by the commissioners, the petition for the corporation, the map, and the order of court, and make, forward, and deliver transcripts, as above provided; but if error is found in the proceedings, or the boundaries are so inaccurately described as to render indefinite or uncertain the limits or extent of the proposed corporation, then the court or judge shall make an order enjoining the recorder from making the record: provided, such order shall not be a bar to any subsequent application to the

commissioners for the purpose of effecting such incorporation. [66 v. 152, § 23.]

Election of officers.

SEC. 13. The first election of officers for such corporation shall be at the first annual municipal election after its creation, and the place of holding the election shall be fixed by the agent of the petitioners, and notice thereof, printed or plainly written, shall be posted by him at three or more public places within the limits of the corporation, at least ten days before the election; which election shall be conducted, and the officers chosen and qualified, in the manner prescribed for the election of township officers: provided, that such first election may be a special election held at any time not exceeding six months after the incorporation, and the time and place of holding such special election shall be fixed by the agent aforesaid, and notice thereof shall be given as is required in this section for the annual municipal election. [73 v. 157, § 24.]

When territory embraces parts of more than one county.

SEC. 14. When the inhabitants residing upon adjacent portions of territory, in two or more counties, laid off into village or hamlet lots, a plat or plats of which have been acknowledged and recorded, as hereinbefore required, desire the organization of such territory into a village or hamlet, the petition therefor shall be made to the commissioners of the county in which the largest number of qualified voters of the proposed corporation reside, and a statement to that effect shall be set forth in the petition; and the transcript of the proceedings of the commissioners, and the map or plat accompanying the same, shall be recorded in the county in which the petition is filed, at the time and in the manner provided for in other cases; and the recorder of such county shall, within ten days thereafter, make a certified transcript of such record for each of the other counties in which any portion of the territory is situated, and forward the same to the recorders of such counties, to be by them recorded in the manner that the original papers are required to be recorded. [66 v. 153, § 25.]

Proceedings to establish or review same as other cases.

SEC. 15. In all other respects, the proceedings to establish the corporation, or review the action of the commissioners, shall be as provided in cases where all the inhabitants residing on the territory to be organized into such corporation, reside in one county. [66 v. 153, § 26.]

Power of officers as in other cases.

SEC. 16. When the jurisdiction of municipal officers is coëxtensive with the county in which the corporation is situated, their jurisdiction in corporations embracing territory of more than one county shall be coëxtensive with each of the counties in which any part of such territory is located. [66 v. 153, § 27.]

Fees to be paid in advance.

SEC. 17. Each officer shall receive for the services required of him under this division, the same fees he would be entitled to for similar services in other cases, and, unless such fees are paid in advance, for services under this chap-

ter, by the agent of the petitioners, of whom demand may be made, and by some person interested for services under other chapters of this division, the officer shall not be required to perform the service. [66 v. 153, § 28.]

Proceedings for change of name.

SEC. 18. Whenever it is desirable to change the name of a village or hamlet, a petition for the purpose, subscribed by at least twelve freeholders of the corporation, setting forth the reasons why such change is desirable, shall be filed in the court of common pleas of the county in which the corporation, or the larger part thereof, is situate; and a notice, setting forth the object of the petitioners, and the time when and place where the petition will be heard, shall be published for thirty days previous to the hearing, in a newspaper of general circulation in the corporation. [2 S. & C. 1138, 40 v. 28, §§ 2, 3.]

Power of court; costs; saving rights, etc.

SEC. 19. The court, upon being satisfied by proof that the prayer of the petitioners is just and reasonable, that notice, as required in the foregoing section, has been given, that at least three-fourths of the inhabitants of such corporation desire the change, and that there is no other municipal corporation in the state with the name as prayed for, may order such change to be made; and the clerk of the court shall thereupon tax the petitioners with the costs, and record the proceedings in a book to be kept by him for the purpose; provided, that such change shall not alter or affect any right, liability, action, or right of action, civil or criminal. [2 S. & C. 1138, 40 v. 28, §§ 1, 3, 4.]

CHAPTER 3.

HAMLETS: MANNER OF ADVANCING TO BE VILLAGES.

SECTION
1. Application by petition.
2. What petition shall contain.
3. Fixing time and place of election; notice.
4. Conduct of election; ballots.
5. Effect of negative vote; not a bar.
6. Census if vote affirmative.
7. Record; delivery of copy, etc., to recorder.
8. Judge, recorder, etc., governed as in case of original corporation.
9. When incorporation complete. Judicial notice.
10. Election of officers. Laws, etc., to remain in force. Books, etc., to successor.

Application by petition.

SECTION 1. When the inhabitants of a hamlet, or any portion thereof, desire that the corporation or part thereof be advanced to a village, they shall make application to the trustees of the hamlet, by petition, signed by at least fifty electors thereof, a majority of whom shall be freeholders. [66 v. 154, §§ 29, 30.]

Petition—its requisites.

SEC. 2. The petition shall contain the statement that the hamlet contains the requisite population for a village, and that it is the desire of the inhabitants to be so advanced, and also the request of the petitioners that an election be held to obtain the sense of the electors upon such advancement. [66 v. 154, § 31.]

Fixing time and place of election.

Notice.

SEC. 3. When the trustees receive the petition, and are satisfied that the persons who signed it are electors and reside within the corporation, and that a majority of them are freeholders, they shall fix the time and place for holding the election, and cause written or printed notices thereof to be posted in three or more public places in the hamlet, at least three weeks prior to the election. [66 v. 154, § 32.]

Conduct of elections.

Ballot.

SEC. 4. The trustees of the corporation shall be judges of the election, and the election shall, as far as practicable, be conducted in the manner prescribed for the election of township officers, and the ballots shall contain the words "For village," or the words "Against village." [66 v. 154, § 33.]

Negative vote not a bar.

SEC. 5. If the votes cast for a village are not a majority of the votes cast at the election, no further proceedings shall be had on that petition; but this shall not be a bar to other petitions for the same purpose. [66 v. 154, § 34.]

Census if vote affirmative.

SEC. 6. If the number of votes cast for a village is a majority of the votes cast at the election, the trustees shall immediately cause a census to be taken, by some suitable person to be by them appointed, of all the inhabitants of the corporation, in the manner mentioned in the third section of the fourth chapter of this division; and the person taking the census shall make affidavit on the paper containing the same, before one of the trustees, or a person authorized to administer oaths, that he believes the census is correct, and he shall thereupon deliver the same to the trustees. [66 v. 154, § 35.]

Record.

SEC. 7. The trustees shall cause to be entered on their journal a minute of all their proceedings, the number of votes cast at the election, the number cast for and number against a village, and the whole number of inhabitants in the corporation, as ascertained by such census; and if the census shows that the corporation contains the requisite population for a village, the trustees shall make a certified transcript of the journal entries and proceedings, and a majority of them having signed it, they shall deliver the same, with the census, poll-book, and tally-sheet, to the county recorder. [66 v. 155, § 36.]

Delivery of copy, etc., to recorder.

Judge, recorder, etc., governed as in case of original corporation.

SEC. 8. The duty of the recorder in relation to such papers, and, in case of a petition to prevent such advancement from being completed, the duty of the petitioner and the court or judge, shall be the same, and, as far as applicable, the same proceedings shall be had as in case of the organization of a village or hamlet, under chapter two of this division. [66 v. 155, § 36.]

When incorporation complete.

SEC. 9. When the recorder makes the record, and certifies and forwards to the secretary of state a transcript of it, the corporation shall be a village, bearing the name of the hamlet, to be organized and governed under this title; and when the organization is effected by the election and qualification of its officers, judicial notice of its existence shall be taken in all cases and proceedings. [66 v. 155, § 38.]

Judicial notice taken of it.

Election of officers.

SEC. 10. The first election of officers of such village shall be at the first annual municipal election after the forwarding of the transcript by the recorder; and the trustees of the hamlet shall remain in office until the officers of the new corporation are elected and qualified; and the by-laws, regulations, and ordinances adopted for the government of such hamlet, shall remain in force, so far as they are consistent with the provisions of this title, until repealed by the council of such village; and at the expiration of their term of office, the trustees shall, on demand, deliver to the clerk of the village all books, papers, and documents in their possession pertaining to the corporation. [66 v. 155, § 39.]

By-laws, etc., to remain in force.

Books, etc., to be delivered to successors.

CHAPTER 4.

CITIES OF THE SECOND CLASS, HOW ADVANCED TO FIRST CLASS; VILLAGES, HOW ADVANCED TO CITIES OF SECOND CLASS.

SECTION
1. Petition for advance; order for vote on question.
2. Certificate as to such vote.
3. Census, when and how taken.
4. When vote, etc., against advance.
5. When vote, etc., for advance.
6. Record; copy; judicial notice.
7. Election of officers; books of old corporation.

Petition for advance.

SECTION 1. When a petition, signed by one hundred freeholders of a village, or two hundred freeholders of a city of the second class, is presented to the council of the corporation in which the signers reside, setting forth that they desire such village to be advanced to a city of the second class, or such city of the second class to a city of the first class, and that they have the requisite population for such advancement, the council shall cause notice to be given by the mayor, as in other cases, that at the next annual election for officers of such city or village, the electors may vote for or against the advancement, their ballots to contain the words, "For advancement," or the words, "Against advancement." [66 v. 156, § 40.]

Order for vote on question.

Certificate as to such vote.

SEC. 2. The clerks and judges of such election shall forthwith certify, in duplicate, to the clerk of the corporation, the whole number of votes given at such election, the number given for the advancement, and the number against it. [66 v. 156, § 41.]

Census, when and how taken.

SEC. 3. If a majority of the votes is in favor of the advancement, and the corporation, according to the last preceding federal census, had not the requisite population, the council shall forthwith cause a census to be taken by one or more suitable persons, of all the inhabitants of such city or village, in which census the full name of each person shall be plainly written, and the names alphabetically arranged, and regularly numbered in one complete series; which census shall be verified before an officer authorized to administer oaths, as required in the sixth section of the third chapter of this division, and filed with the clerk of the corporation. [66 v. 156, § 42.]

When vote, etc., against advance.

SEC. 4. The clerk shall lay the certificate of election and census before the council, at its next regular meeting after the same shall have been filed in his office, and if it appear that all the votes cast for the advancement are not a majority of all votes cast at the election, or that the corporation does not contain the requisite population to be advanced, no further proceedings shall be had on that petition; but this shall not bar any new proceeding for such purpose. [66 v. 156, § 43.

Not a bar.

When vote, etc., for advance.

SEC. 5. If a majority of votes is in favor of such advancement, and the corporation, according to the federal census, or the census taken by order of the council, contains the requisite number of inhabitants, the council shall thereupon, by resolution, declare that the inhabitants of the corporation have decided on such advancement, and direct the clerk to certify the resolution to the recorder of the county. [66 v. 156, § 44.]

Record.

SEC. 6. The duty of the recorder in relation to the transcript and papers shall be the same as provided in chapter two, of this division, so far as those provisions are applicable; and when the recorder shall make the record, and certify and

Copy.

forward to the secretary of state a transcript of the same, the corporation shall be a city of the first or second class, as the case may be, to be organized and governed under the provisions of this title; and when the corporation is actually organized, by the election and qualification of its officers

Judicial notice.

notice of its existence as such shall be taken in all judicial proceedings. [66 v. 157, § 45.]

Election of officers.

SEC. 7. The first election of officers of the new corporation shall be at the first annual municipal election after such proceedings, and the officers of the old corporation shall remain in office until the officers of the new corporation are elected and qualified; and the ordinances, by-laws, and resolutions adopted by the old corporation shall, as far as consistent with this title, continue in force until repealed by the council of the new corporation; and the council and

Books, etc., of old corporation and officers.

officers of the old corporation shall, upon demand, after the expiration of their term of office, deliver to the proper officers of the new corporation all the books of record, doc-

uments, and papers in their possession belonging to the old corporation. [66 v. 157, § 46.]

CHAPTER 5.

ANNEXATION.

SUBDIVISION I. *Annexation of territory on application of its citizens.*
SUBDIVISION II. *Annexation of territory on application of a corporation.*
SUBDIVISION III. *Annexation of one municipal corporation to another.*

SUBDIVISION I.

SECTION
1. Annexation of adjacent territory.
2. Petition therefor.
3. To be presented to commissioners; their duties; duties of clerk of corporation.
4. Further duties of clerk; duties of council.
5. Rejection of application and its effect.
6. Proceedings when application allowed.
7. Petition to enjoin the proceeding.
8. Proceedings when petition to enjoin is dismissed.
9. Proceedings when injunction allowed.
10. Rights of inhabitants if annexation allowed.
11. Cases where corporation is situated in more than one county.

SUBDIVISION II.

12. General provisions as to right of such annexation.
13. Council may pass preliminary ordinance.
14. Petition to county commissioners.
15. Proceedings before commissioners.
16. Cases where corporation is in more than one county.
17. Rights when annexation complete.
18. When errors not fatal to proceeding.

SUBDIVISION III.

19. Annexation of contiguous tertory to corporations.
20. Submission of question to vote.
21. Ordinance for purpose.
22. Result, if favorable, to be certified.
23. Council or trustees to appoint commissioners.
24. Report of commissioners.
25. Clerk of corporation to make transcripts.
26. When annexation to be deemed complete; power of corporation thereafter.
27. Corporations to be governed as one; not to affect rights or liabilities.
28. How part of village attached to a city.

SUBDIVISION I. ANNEXATION OF TERRITORY ON APPLICATION OF ITS CITIZENS.

Annexation of adjacent territory.

SECTION 1. The inhabitants residing on any territory adjacent to any city or village may, at their own option, cause such territory to be annexed to such city or village, in the manner hereinafter stated. [66 v. 264, § 679.]

SEC. 2. Application for such purpose shall be by petition,

Petition therefor.

addressed to the commissioners of the county in which such territory is located, signed by a majority of the adult freeholders residing on such territory, and shall contain the name of some person who is authorized to act as the agent of the petitioners in securing such annexation, and a full description of the territory, and be accompanied by an accurate map or plat thereof. [66 v. 264, § 680.]

To be presented to commissioners.

SEC. 3. Such petition shall be presented to the board of commissioners at some regular session thereof, and when so presented the same proceedings shall be had, in all respects, as far as applicable, and the same duties in respect thereto shall be performed by the commissioners and other officers, as are required in the case of an application to be organized into a village under the provisions of this division; and the final transcript of the commissioners, and the accompanying map or plat and petition, shall be deposited with the clerk of the city or village to which such annexation is proposed to be made, who shall file the same in his office. [66 v. 265, § 681.]

Their duties.

Duties of clerk of corporation.

Duties of clerk and council.

SEC. 4. At the next regular session of the council of such city or village, after the expiration of sixty days from the date of such filing, the clerk shall lay the transcript and the accompanying map or plat and petition before the council; and thereupon the council shall, by resolution or ordinance, accept or reject the application for annexation. [66 v. 265, § 682.]

Rejection of application and its effect.

SEC. 5. If the resolution or ordinance is to reject such application, no further proceedings shall be had; but such rejection shall not be a bar to any application thereafter to the county commissioners on the same subject. [66 v. 265, § 683.]

Proceedings when application is allowed.

SEC. 6. If the resolution or ordinance is an acceptance of such application, the clerk of the city or village shall make two copies, containing the petition, map or plat accompanying the same, transcript of the proceedings of the commissioners, and resolutions and ordinances in relation to the annexation, with a certificate to each copy that the same is correct, which certificate shall be signed by him in his official capacity, and be authenticated by the seal of such city or village, if any there be, one of which copies he shall forthwith deliver to the recorder of the county, whose duty it shall be to make a record thereof in the proper book of records, and file and preserve it, and the other copy shall be forwarded by the clerk to the secretary of state. [66 v. 265, § 684.]

Petition to enjoin the proceedings.

SEC. 7. If the clerk, within sixty days from the filing of such transcript, map, or plat and petition in his office, receive notice from any person interested that he has presented to the court of common pleas, or a judge thereof, a petition to enjoin further proceedings, the clerk shall not report to the council such transcript, map, or plat and petition

filed with him, until after the final hearing and disposition of the petition so presented to such court or judge. [66 v. 265, § 685.]

Proceedings when petition dismissed.

SEC. 8. If the court or judge make an order dismissing the petition, the clerk of the court shall immediately forward a certified copy of it to the clerk of the corporation, who, at the next regular meeting of the council, shall lay before the council such transcript, map, or plat, and the petition accompanying the same, as if no such petition had been so presented to the court or judge. [66 v. 265, § 686.]

Proceedings when injunction allowed.

SEC. 9. If the court or judge enjoin the clerk from making such report to the council as before provided, a certified copy of the order shall be immediately forwarded by the clerk of the court to the clerk of the corporation, who shall file the same with such transcript, map or plat, and petition, and preserve the same in his office, and thereupon no further proceedings shall be had in the matter; but such order of the court or judge shall not operate as a bar to any applications thereafter to the commissioners of the county for such purpose. [66 v. 266, § 687.]

Rights of inhabitants if annexation allowed.

SEC. 10. When the resolution or ordinance, accepting such annexation has been adopted, the territory shall be deemed a part of the city or village, and the inhabitants residing thereon shall have all the rights and privileges of the inhabitants within the original limits of such city or village. [66 v. 266, § 688.]

Cases where corporation is situated in more than one county.

SEC. 11. Where the corporation is situated in two or more counties, or the territory so to be annexed is situated in a different county from that in which the corporation or some part of it is situated, the proceedings, so far as practicable, shall be as directed in sections fourteen and fifteen of chapter two of this division. [66 v. 266, § 689.]

SUBDIVISION II. ANNEXATION OF TERRITORY ON APPLICATION OF A CORPORATION.

General provisions as to right.

SEC. 12. When the inhabitants, generally, of any municipal corporation, desire to enlarge the corporate limits by the annexation of contiguous territory, it shall be done in the manner hereinafter specified. [74 v. 36, § 690.]

Council may pass preliminary ordinance.

SEC. 13. The council or board of trustees of the corporation, by a vote of not less than a majority of the members elected, shall pass an ordinance authorizing such annexation to be made, and directing the solicitor of the corporation, or some one else to be named in the ordinance, to prosecute the proceedings necessary to effect such annexation. [74 v. 36, § 691.]

Petition to county commissioners.

SEC. 14. The application of the corporation to the county commissioners for such purpose shall be by petition, setting forth that, under an ordinance of the council or board of trustees, the territory therein described was authorized to be annexed to the corporation; and the petition shall contain

an accurate description of such territory, and be accompanied by an accurate map or plat thereof. [74 v. 36, § 692.]

Proceedings before commissioners.

SEC. 15. When such petition is presented to the commissioners, like proceedings shall be had, in all respects, so far as applicable, as are required under the provisions of subdivision one of this chapter. [66 v. 266, § 693.]

Cases where corporation in more than one county.

SEC. 16. Where the corporation is situated in two or more counties, or the territory to be annexed is situated in a different county from that in which the corporation or some part of it is situated, the proceedings shall be in the county in which the territory to be annexed, or some part of it, is situate. [66 v. 267, § 694.]

Rights when annexation complete.

SEC. 17. When the annexation of such described territory has been completed, the same shall be deemed a part of such municipal corporation, and the inhabitants residing on the territory shall have all the rights and privileges of the inhabitants residing within the original limits of the corporation. [66 v. 267, § 695.]

When errors not fatal to proceedings.

SEC. 18. No error, irregularity, or defect in such proceedings shall render it invalid, if the addition has been recognized as a part of the corporation, and taxes levied upon it as such have been paid, and it has been subjected to the authority of the council, without objection from its inhabitants. [66 v. 257, § 696.]

SUBDIVISION III. ANNEXATION OF ONE MUNICIPAL CORPORATION TO ANOTHER.

Annexation of contiguous territory to corporations.

SEC. 19. When the inhabitants, generally, of any municipal corporation, the territory of which shall be contiguous, and adjoining the territory of another municipal corporation, desire to be annexed to such other corporation, such annexation shall be effected in the manner hereinafter described. [66 v. 267, § 697.]

Submission of question to vote.

SEC. 20. The trustees or council of the corporation proposing such annexation shall submit the question of annexation to the electors of the corporation, and the trustees or council of the corporation to which the annexation is proposed to be made, shall also submit the same question to its electors. [66 v. 267, § 698.]

Ordinance for purpose.

SEC. 21. The submission shall be by ordinances adopted by the trustees or council of each corporation at least thirty days prior to an annual April or October election, at which election the vote shall be taken, and the ordinances shall each prescribe the manner in which such submission shall be made, and they shall be published in each corporation, by posters or otherwise, in such manner as the respective trustees or councils may deem most expedient, for the period of at least twenty days prior to the day fixed for such election. [66 v. 267, § 699.]

Result, if favorable, to be certified.

SEC. 22. If a majority of the electors of each corporation, voting on the question so submitted, is in favor of such

annexation, the trustees or council of each shall thereupon cause the result to be certified to the other corporation. [66 v. 268, § 700.]

Council, etc., to appoint commissioners.

SEC. 23. The trustees or council of each corporation shall then appoint, by resolution or ordinance, three commissioners, whose duty it shall be to arrange the terms and conditions of such annexation, and report the result of their action to the trustees or council of their respective corporations. [66 v. 268 § 701.]

Report of commissioners.

SEC. 24. When the report of such commissioners shall be approved by an ordinance passed by each corporation, certified copies thereof, signed by the presiding officer of the trustees or council of each corporation, and the respective clerks of the corporations, and authenticated by the corporate seal of each, if any there be, shall be filed in the office of the clerk of the corporation to which such annexation is proposed to be made. [66 v. 268, § 702.]

Clerk of corporation to make transcripts.

SEC. 25. The clerk shall, under the direction of the corporation, make and certify two transcripts of all the ordinances, abstracts of the returns of the votes, and other papers relating to such annexation, one of which shall be filed in the office of the recorder of the county, who, having made a record thereof, shall file and preserve it, and the other shall be forwarded by such clerk to the secretary of state. [66 v. 268, § 703.]

When annexation to be deemed complete.

Power of corporation thereafter.

SEC. 26. When the transcripts are certified, and one of them is delivered to the recorder and the other forwarded to the secretary of state, as aforesaid, the annexation shall be deemed complete; and the corporation to which the annexation is made may pass such ordinances as will carry into effect the terms thereof, so far as the same are not inconsistent with this title, and with the regular and proper government of the corporation under its provisions; and any part of such terms so inconsistent shall be deemed void, but their nullity shall in no manner affect such annexation. [66 v. 268, § 704.]

Corporations to be governed as one.

Not to affect rights or liabilities.

SEC. 27. When the annexation is completed, the two former corporations shall be governed as one, embracing the territory of each; and the inhabitants of all such territory shall have equal rights and privileges; but such annexation shall not affect any rights or liabilities existing at the time of the annexation, either in favor of or against the corporations; and suits founded on such rights and liabilities may be commenced, and pending suits prosecuted to final judgment and execution, as though such annexation had not taken place. [66 v. 268, § 705.]

How part of village attached to a city.

SEC. 28. When a city and village adjoin each other, and the inhabitants of any portion of the territory constituting a part of such village desire to be detached therefrom, and annexed to such city, the commissioners of the proper county, on the application of the council of the city, and on the written request of at least two-thirds of the legal voters

inhabiting the territory proposed to be so annexed, may cause such alteration to be made, and the boundaries of such city, and of such village respectively, to be established in accordance with such application and request, and such territory shall thereafter constitute a part of such city: provided, that in all their proceedings in the premises, the county commissioners shall, as far as the same are applicable, be governed by the provisions of this division prescribing the manner of proceeding on applications for the annexation of adjacent unincorporated territory to villages and cities; and provided further, that the commissioners shall ascertain and apportion the amount of the existing indebtedness of the village, which shall be assumed and paid by the city on the annexation of the territory aforesaid. [68 v. 85.]

CHAPTER 6.

DUTIES OF STATE OFFICERS AS TO ADVANCEMENT OR REDUCTION IN CLASS OR GRADE.

SECTION
1. State officers to ascertain what municipal corporations may be advanced.
2. Publication to be made by secretary of state with respect thereto.
3. Submission of question of advance to a vote.
4. Further duties of secretary of state.
5. His annual report to contain statement on the subject.
6. Further notice by secretary of state.

State officers to ascertain what municipal corporations may be advanced.

SECTION 1. It shall be the duty of the governor, auditor, and secretary of state, or any two of them, at the time of ascertaining the ratio of representation, as required by the eleventh section of the eleventh article of the constitution, to ascertain what cities of the second class are entitled to become cities of the first class, what villages are entitled to become cities, and their proper class, and what hamlets are entitled to become villages; and the report of the secretary of state for such year shall contain the name of each municipal corporation, its grade and class, and its population as ascertained by the preceding federal census. [66 v. 271, § 718.]

Publication to be made by secretary of state with respect thereto.

SEC. 2. The secretary of state shall cause a statement of the corporations which may be so advanced, to be published in some newspaper in Columbus, and also in some newspaper published in each of the cities, villages and hamlets, which shall contain the required population to be advanced in class or grade, and a copy of said statement shall also be transmitted by the secretary of state to the general assembly, at its next session thereafter. [66 v. 271, § 719.]

Submission of question of advance to a vote.

SEC. 3. When the statement has been published, the council of any corporation which, according to such statement, shall have the required population to be advanced to a corporation of the next higher class or grade, shall have the power, at any time, by ordinance passed for such purpose, to submit to the voters of the corporation, the question whether such corporation shall be advanced to the class or grade of the next higher corporation; and such election shall be conducted, and the proceedings thereafter had, in case the result of the election is in favor of such advancement, in all respects, as provided in chapters three and four of this division. [66 v. 271, § 720.]

Further duties of secretary of state.

SEC. 4. The secretary of state shall receive and preserve in his office all papers transmitted to him in relation to the organization of hamlets or villages, the annexation of territory to any city or village, and the consolidation or advancement, or reduction in class or grade, of municipal corporations. [66 v. 271, § 721.]

His annual report to contain statement on th subject.

SEC. 5. He shall also submit, in his annual report to the general assembly, a statement showing the names, location, and limits of each hamlet and village organized under this title during the period embraced in such report; and also all villages and cities, the limits of which have been increased with the territory so added, and the corporations which have been advanced or reduced in class or grade during the same period. [66 v. 271, § 722.]

Further duties of secretary of state.

SEC. 6. When a hamlet is advanced to the grade of a village, in the manner provided in this division, or a village is advanced to a city of the second class, or a city of the second class is advanced to a city of the first class, in the manner herein provided, or any municipal corporation has been reduced to a corporation of a lower degree, as hereinafter provided, the secretary of state, upon requisite evidence of the fact being filed in his office, shall cause a notice to be published in one of the newspapers of Columbus, declaring that such municipal corporation has been advanced or reduced in class or grade, as the case may be. [66 v. 272, § 723.]

CHAPTER 7.

MERGER OF TOWNSHIP IN CORPORATION.

SECTION
1. In cases of such merger certain offices to be abolished; directors of infirmary.
2. Duty of such directors.
3. Treasurer and clerk of the corporation; their duties.
4. What property shall vest in the corporation.
5. Pending suits and existing rights.

SECTION 1. When the corporate limits of a city or village become identical with those of a township, the office of

In case of such merger certain offices to be abolished.

township trustee, township treasurer, and township clerk in such township shall be abolished; and all the powers and duties of trustees of townships, conferred or prescribed by law, shall vest in and be performed by the council, except as to binding out apprentices and administering relief to the poor; and if such corporation is not already provided with an infirmary, the council shall forthwith, and from year to year, appoint one or more, and not exceeding three, directors of the infirmary, and prescribe their duties by ordinance. [66 v. 229, § 475.]

Directors of infirmary.

Their duties.

SEC. 2. Such directors shall be clothed with all the powers and perform all the duties of township trustees, as to binding out and protecting apprentices, in relieving and removing paupers, and in counties having a county infirmary shall make orders relative to paupers, which orders shall have the same validity, and be treated the same as like orders made by township trustees; and they shall have the power of recovering, in the name of the corporation, such expense as may be chargeable to other municipal corporations or persons. [66 v. 229, § 476.]

Treasurer and clerk.

SEC. 3. The duties of treasurer and clerk of such township shall be performed by the clerk and treasurer of the corporation; and all moneys collected or authorized by law to be paid to the township treasurer shall be paid to such corporation treasurer. [66 v. 229, § 477.]

What property shall vest in council.

SEC. 4. All property, real and personal, together with all moneys and credits, books, vouchers, records, files, accounts, documents, and bonds of an official character, in the possession or under the control of such township trustees, township clerk or township treasurer, or either of them, whose offices are thus abolished, shall vest in the council; and such township officers shall, when their offices have ceased by operation of this title, forthwith deliver over to the council of the corporation a full statement of their accounts, together with the property, moneys, credits, books, records, accounts, files, vouchers, official bonds, and documents aforesaid. [66 v. 229, § 478.]

As to pending suits and existing rights.

SEC. 5. All suits pending and judgments recovered by or against any such township, together with all rights, interests, claims, and demands, in favor of or against the same, may be continued, prosecuted, collected, or enforced by or against the corporation; and all suits authorized by law to be brought by or against such township or township trustees, not caused by their non-compliance with this title, shall be prosecuted by or against the corporation. [66 v. 229, § 479.]

CHAPTER 8.

WARDS, HOW ESTABLISHED; CHANGE OF BOUNDARIES.

SECTION
1. Boundaries to be established by ordinance.
2. Notice of ordinance; its publication.
3. Wards in annexed territory.
4. Boundaries of wards by streets, alleys, etc.
5. Election of council in new wards.

Boundaries to be established by ordinance.

SECTION 1. When the corporate limits of a city or village are altered, extended, or reduced, or the population of the corporation, or of a ward thereof, is so increased or diminished as to render, in the opinion of the council, a division or redistricting of the corporation into wards, or a change in the boundary of any ward necessary, the same may be done by ordinance, at any regular meeting of the council. [66 v. 216, § 405.]

Notice of ordinance; its publication.

SEC. 2. When such ordinance is introduced, the council shall, by resolution, require the clerk to give notice of its pendency, and of the proposed change, increase or reduction of boundaries, in some newspaper published and of general circulation in the corporation, for the period of three consecutive weeks prior to any action upon the ordinance. [66 v. 216, § 406.]

Wards in annexed territory.

SEC. 3. When territory is annexed to any corporation, or one corporation is annexed to another, such territory or corporation so annexed may be organized into a new ward or wards, or attached to any existing ward or wards, as the council may deem proper. [66 v. 216, § 407.]

Boundaries of wards to be by streets, alleys, etc.

SEC. 4. All wards hereafter established or changed shall be bounded by streets, alleys, avenues, public grounds, or corporation lines, and be composed of adjacent and compact territory; and the several wards, at the time of redistricting, shall contain as nearly an equal number of inhabitants as may be practicable. [66 v. 216, § 408.]

Election of council in new wards.

SEC. 5. When a change in the number of wards or alteration in the boundaries of a ward is made, or a new ward is established, there shall be no election for members of council or ward officers until the next ensuing annual election for corporation officers. [66 v. 216, § 409.]

CHAPTER 9.

SURRENDER OF MUNICIPAL POWERS; REDUCTION IN CLASS, ETC.

SECTION
1. Reduction of city to village.
2. Petition therefor.
3. Notice of election to be given.
4. The ballots; election, how conducted.
5. How poll-books and tally-sheets certified.

SECTION
6. And opened by council.
7. Result to be declared.
8. Surrender not to interfere with schools.
9. One transcript to be recorded; the other forwarded to secretary of state.
10. Not to affect incumbents of offices; wards and ordinances unaffected.
11. Surrender by villages and hamlets of their powers.
12. Petition therefor.
13. Same proceedings as in case of cities; saving as to taxes.
14. Rights and liabilities unaffected: As to increase of indebtedness.
15. Collection and disbursement of taxes.

Reduction of city to village.

SECTION 1. A city of the second class may surrender its corporate rights and be reduced to a village, in the manner hereinafter specified. [66 v. 269, § 706.]

Petition therefor.

SEC. 2. A petition for the purpose, signed by at least one hundred of the adult freeholders of the corporation, shall be presented to the council, setting forth that it is the desire of a majority of the citizens of the corporation to surrender their corporate rights and be reduced to a village, and it shall contain a prayer, that an election may be held to determine the sense of the electors upon the subject. [66 v. 269, § 707.]

Notice of election to be given.

SEC. 3. The council shall thereupon fix a day and place for holding the election, and shall cause the clerk of the corporation to give notice thereof and of the object of the election, in one or more newspapers published in such city, and by posters set up in five or more public places within the corporation, for the period of not less than twenty days next prior to the day of holding the election. [66 v. 269, § 708.]

The ballots.

SEC. 4. The ballots cast at such election shall contain the words, "For surrender," or "Against surrender," and such election shall be held and conducted in the same manner and by the same officers as other elections in the corporation, and the laws of the state regulating elections shall govern the same so far as applicable. [66 v. 269, § 709.]

Election, how conducted.

How poll-books and tally-sheets certified.

SEC. 5. The officers holding the election shall, after counting the ballots, forthwith certify and cause to be delivered to the clerk of the corporation, in a sealed envelope, having indorsed thereon the nature of its contents, the poll-book and tally-sheets of such election. [66 v. 269, § 710.]

And opened by council.

SEC. 6. The clerk, upon receiving the poll-book and tally-sheets, shall file and preserve the same in his office until the next regular meeting of the council, when the council shall cause them to be opened and the result of the election declared and entered on its journal. [66 v. 269, § 711.]

Result to be declared.

SEC. 7. If the majority of votes cast at the election is "For surrender," the council shall, by resolution, declare that, by the determination of the legal voters at a special election held for the purpose, the corporate rights of such corporation are surrendered, or that such city is reduced to

a village, and shall thereafter be known as the village of ——, according to the fact. [72 v. 47, § 712.]

Surrender not to interfere with school district.

SEC. 8. The surrender shall in no manner interfere with the organization of the school district under whatever law the same may have been organized in such corporation, and such school district shall remain wholly unaffected thereby, as though no surrender had been made. [72 v. 47, § 712.]

One transcript to be recorded; the other forwarded to secretary of state.

SEC. 9. The clerk shall thereupon cause two certified transcripts of the resolution to be made, one of which he shall forthwith deliver to the recorder of the county, who shall record it in the proper book of records in his office, and the clerk shall forward the other to the secretary of state. [66 v. 270, § 713.]

Not to affect incumbents of offices.

SEC. 10. All officers elected or chosen as officers of such corporation, shall continue in office and perform their duties as though no such surrender had been made, until the next regular election, and until the officers of the new corporation are elected and qualified; and the wards of such city shall remain and the ordinances thereof shall continue in force, until changed or repealed by the council of the new corporation, except so far as such ordinances may be inconsistent with the provisions relating to villages. [66 v. 270, § 714.]

Wards and ordinances unaffected.

Surrender, etc., by villages and hamlets of their powers.

SEC. 11. Villages may surrender their corporate rights, or be reduced to hamlets, and hamlets may surrender their corporate rights in the same manner, so far as applicable, as is provided in the preceding sections in this chapter for the surrender of corporate rights by cities of the second class; and the duties of all officers in respect thereto and proceedings thereafter, so far as applicable, shall be the same as prescribed in the preceding section. [72 v. 47, § 715.]

Petition therefor.

SEC. 12. Where the petition is by the electors of a village or hamlet, it shall be sufficient if signed by a majority of its electors, if such electors are less than one hundred in number; but if the electors are one hundred or more, in number, then by not less than fifty of such electors. [72 v. 47, § 715.]

Same proceedings as in case of cities.

SEC. 13. On the petition of at least two-thirds of the adult freeholders inhabiting any portion of the territory of a village, setting forth a desire to surrender their corporate rights, and be detached from the corporation, the same proceedings shall be had as are provided in this chapter, with respect to reduction in grade, as far as the same may be applicable, including a submission of the question to the legal voters of the village; but, on the reduction of the corporate limits, subsisting levies of taxes by the council shall be collected and paid into the village treasury for the purposes for which they were made, and the council, for paying existing indebtedness, shall, until the same is paid, retain the power of levying taxes on the taxable property within the detached territory, as if the same had not been detached; and the provisions of section fourteen and fifteen of this chapter shall govern in case of such reduction, so far as the same may be applicable. [72 v. 47, § 715.]

Saving as to taxes, etc.

Rights and liabilities unaffected.

SEC. 14. The surrender of corporate rights, as herein provided, shall not be held to affect rights accrued or liabilities incurred by such corporations, or the power to settle claims, dispose of property, or levy and collect taxes to discharge liabilities incurred, but the same shall remain in full force and effect, as also the corporate character of such municipal corporation, in respect thereto, as though no surrender had been made; provided, that when the petition is presented by a village or hamlet for the entire surrender of its corporate rights, it shall be unlawful for such corporation, or the council thereof, after the presentation of such petition to incur or create any new debt or liability, or enter into any new contract, or increase the debts or liabilities of such corporation in any manner during the pendency of the petition, and until the result of the election is declared, or thereafter if a majority of votes cast at such election is "For surrender;" and all debts or liabilities incurred, or contracts made, contrary to the provisions of this title, shall be void. [72 v. 47, § 716.]

As to increase of indebtedness.

Collection and disbursement of taxes.

SEC. 15. Taxes which, at the time of such surrender, remain due and unpaid, shall be collected, and the same and all moneys in the treasury of the city, village, or hamlet, shall be applied to the objects for which they were raised; and, in case any moneys remain on hand after the debts and liabilities of the corporation are discharged, they shall be paid into the treasury of the village or hamlet, or into the common school fund of the district embracing such corporation, as the case may be; and all property owned by the corporation at the time of the surrender, shall become the property of the new corporation, or of the school district, as the case may be, and the title thereto vest accordingly. [66 v. 270, § 717.]

THIRD DIVISION: LEGISLATIVE DEPARTMENT.

CHAPTER 1. TRUSTEES OF HAMLETS; THEIR POWERS.
CHAPTER 2. COUNCIL AND BOARDS OF ALDERMEN.
CHAPTER 3. CITIES AND VILLAGES; ENUMERATION OF POWERS.
CHAPTER 4. ORDINANCES, RESOLUTIONS, BY-LAWS—HOW ADOPTED.

CHAPTER 1.

TRUSTEES OF HAMLETS: THEIR POWERS.

SECTION
1. Trustees of hamlets.
2. Term of office.
3. Vacancy; quorum.
4. Power over streets, etc.
5. Limitations on such powers.
6 General and specific powers.
7. Power to make by-laws, etc.

Trustees of hamlets.

SECTION 1. The corporate authority of hamlets shall be vested in three trustees, who shall be electors residing within the corporate limits, and who shall hold their office for three years, except as herein provided, and until their successors are elected and qualified. [66 v. 157, § 47; 66 v. 159, § 58.]

Term of office.

SEC. 2. At the first meeting of the trustees, they shall determine by lot the term of service of each, so that one shall serve for one year, one for two years, and one for three years, and at every succeeding annual election, one trustee shall be elected to serve for three years, and they shall appoint from their own body a president of the board. [66 v. 158, § 48; 73 v. 170, § 49.]

Vacancy.

SEC. 3. The trustees shall have power to fill any vacancy which may happen in their own body, from the electors of the corporation, and the persons so appointed shall continue in office until the next regular election, and until his successor is elected and qualified; and any two of the trustees may transact business; but notice of any meeting for the purpose must be given to all. [66 v. 158, § 50.]

Quorum.

Power over streets, etc.

SEC. 4. The trustees shall have the exclusive jurisdiction of public roads, streets, alleys, sewers, and drains, within the limits of the corporation; and they shall have power to construct and keep in repair bridges and sidewalks; lay out, establish, open, widen, narrow, improve, straighten, keep in order and repair roads, streets, and alleys; open and construct, and keep in order and repair, sewers and drains; enter upon and take for the purposes aforesaid, when necessary, land and material, and assess and collect a charge for the construction, improvement, and repair of any such road, street or alley; but if a street is vacated or narrowed, the right of way or easement of lot owners shall not be thereby impaired. [74 v. 198, § 51.]

Limitations on such powers.

SEC. 5. No order directing the opening of a new road, street or alley, or the taking of land for the improvement, straightening or changing a road, street or alley, shall be made by said trustees, nor shall any ordinance be passed for such purpose, unless they all concur; and no order shall be made for the improvement or repair of a road, street or alley, except on the petition of two-thirds of the owners of the lots or land through or by which such road, street or alley, or part thereof to be improved or repaired, shall pass. [66 v. 158, § 52.]

General and specific powers of hamlets.

SEC. 6. In addition to the powers specifically granted in this title, and subject to the exceptions and limitations in other parts of it, hamlets shall have the general powers enumerated in this section, and the trustees may provide by ordinance for the exercise and enforcement of the same: *1. To protect* the property and persons of the inhabitants *against* injuries and destruction by fire, thieves, robbers, *burglars*, and persons violating the public peace. 2. To *suppress* riots, noise and disturbance, gambling, drunken-

ness, and indecent and disorderly assemblages and conduct. 3. To punish all lewd and lascivious behavior in the streets, alleys, and other public places 4. To suppress and restrain disorderly houses and houses of ill fame. 5. To regulate and restrain ale, beer, and porter houses or shops, and houses and places of notorious and habitual resort for tippling and intemperance. 6. To regulate taverns and other houses of public entertainment. 7. To regulate or restrain theatrical exhibitions and public shows, and all exhibitions of whatever name or nature for which money is demanded or received; but public lectures on historic, literary or scientific subjects shall not come within the provisions of this section. 8. To prevent injury or annoyance from anything dangerous, offensive or unhealthy, and to cause any nuisance to be abated. 9. To acquire real estate for public halls and school-houses, and to erect the necessary buildings thereon. 10. To protect all public buildings and property within or owned by the corporation. 11. To provide public cemeteries and for the improvement and protection thereof, and to regulate the burial of the dead. And, 12. To provide for the comfort, convenience and safety, preserve the health and peace, promote the good order and prosperity, and improve the morals of the inhabitants of the corporation. [66 v. 158, § 53.]

Power to make by-laws, etc.

SEC. 7. The trustees shall have power to make and publish, in the same manner as other corporations, such by-laws, resolutions, and ordinances as to them shall seem necessary to carry into effect the foregoing powers, and shall have, in all respects, the like right and remedies in the enforcement of such by-laws, resolutions, and ordinances as are herein given to other municipal corporations; and all by-laws and ordinances shall require for their adoption the concurrence of at least two of the trustees, and shall only be adopted at a stated meeting of the trustees, after a notice has been given to all, proof of which shall appear on their minutes. [73 v. 199, 200, § 54.]

CHAPTER 2.

COUNCIL AND BOARDS OF ALDERMEN.

SUBDIVISION I. *Council in cities of the first and third grades of the first class.*
SUBDIVISION II. *Council in villages, and cities other than cities of the first and third grades of the first class.*
SUBDIVISION III. *Councils and boards of aldermen; general provisions.*

SUBDIVISION I.

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1. Common council—what constitutes.
2. Board of aldermen in Cincinnati.
3. Board of aldermen in Toledo.
4. Board of councilmen.
5. Election of aldermen in Cincinnati.
6. Election of aldermen in Toledo.
7. Election of councilmen.
8. Organization of boards.
9. Election of presiding officers, etc.
10. Meetings of boards.
11. Acts to be by concurrent ordinance.
12. Veto power of mayor.
13. His duty as to ordinances, etc.
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15. Joint session of the boards.
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SUBDIVISION II.

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18. Council in cities and villages.
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32. Process to compel attendance.
33. Oaths of witnesses.
34. Testimony of witness not to be used against him, etc.
35. Voting precincts.
36. Services and supplies to be in pursuance of contracts.
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SUBDIVISION I. COUNCIL IN CITIES OF THE FIRST AND THIRD GRADES OF THE FIRST CLASS.

Common council—what constitutes.

SECTION 1. In cities of the first and third grades of the first class, the legislative power and authority shall be vested in a board of aldermen and a board of councilmen, which together shall form the common council. [67 v. 7, § 1; 71 v. 49, § 1.]

Board of aldermen in Cincinnati.

SEC. 2. In cities of the first grade of the first class, the board of aldermen shall consist of thirty members, to be elected by districts, to serve for the term of four years; and for the purpose of electing such aldermen such cities shall be and are hereby divided into five districts, as follows:

Districts.

The first, second, third, fourth, and seventh wards shall constitute the first district.

The fifth, sixth, eighth, ninth, and tenth wards shall constitute the second district.

The eleventh, twelfth, twenty-third, twenty-fourth, and twenty-fifth wards shall constitute the third district.

The thirteenth, fourteenth, fifteenth, sixteenth, and twenty-second wards shall constitute the fourth district.

And the seventeenth, eighteenth, nineteenth, twentieth, and twenty-first wards shall constitute the fifth district. [75 v. 56, § 1.]

Board of aldermen in Toledo.

SEC. 3. In cities of the third grade of the first class the board of aldermen shall consist of one alderman from each ward, and they shall be elected for the term of two years. [67 v. 7, § 2.]

Board of councilmen.

SEC. 4. The board of councilmen shall consist of two councilmen from each ward, and they shall be elected for the term of two years. [66 v. 163, § 82.]

Election, and term of aldermen in Cincinnati.

SEC. 5. In cities of the first grade of the first class, in which six members of the board of aldermen were heretofore elected in each district, those in the odd numbered districts to serve for two years, and those in the even numbered districts to serve for four years, hereafter at the expiration of the terms of such members, six members shall be elected to serve for the period of four years in each district. [75 v. 56, § 1.]

Election of aldermen in Toledo.

SEC. 6. In cities of the third grade of the first class, the members of the board of aldermen in office shall hold their offices until the expiration of their terms, at which time their places shall be filled, at annual municipal elections, by the election of aldermen, to serve for the term of two years. [67 v. 7, § 2.]

Election of councilmen.

SEC. 7. Members of the council in office shall serve until the expiration of their respective terms, and at each annual municipal election hereafter, one member of the council shall be elected in each ward to serve for two years; and where a new ward is created, the mayor, in his proclamation, shall give notice to the electors that at the next municipal election they shall vote, in such ward, for one member for one year, and one member for two years, designating the term on their ballots. [66 v. 163, § 85; 68 v. 53, § 410.]

Organization of boards.

SEC. 8. Aldermen and councilmen, within ten days after their election, shall assemble, upon separate days, and organize their respective boards, and it shall be the duty of the mayor, or, in his absence or inability, the clerk, to call to order the members elect, and the members holding over, and, as the members elect are called, each shall present his certificate and take the required oath or affirmation; and a majority of the members elected to either of said boards shall constitute a quorum for the transaction of business. [70 v. 16, § 3; 66 v. 164, § 86.]

Election of presiding officers, etc.

SEC. 9. Each board shall elect a president and vice-president from its own body; and it shall be the duty of the president to preside at all meetings; but in his absence the vice-president shall preside, and in the absence of both officers a president pro tempore shall be elected; and all officers required to be elected by either board, in separate or joint session, shall be elected viva voce. [70 v. 17, § 3.]

Meetings of boards.

SEC. 10. Each board shall meet in the council chamber at least twice each month, on such days as it may select; but both boards shall not meet in separate session on the same day, nor shall either board meet on the day after a meeting of the other branch, except in joint session; provided, that if such boards, at any time, appoint meetings, or be called to meet, on the same day, the board of aldermen shall have precedence on any Tuesday, Thursday, or Saturday, and the board of councilmen shall have precedence on any other day. [67 v. 7, § 4.]

Acts to be by concurrent ordinance.

SEC. 11. Every legislative act of the common council shall be by ordinance, resolution, or order, which shall have passed the two boards; any ordinance, resolution, or order may originate in either board, and when it has passsed one board, may be rejected or amended in the other; and at least one week shall elapse, after the passage by one board of any ordinance, resolution, or order involving the expenditure of money, or approving any contract for the payment of money, or granting any franchise, or creating any right, before the passage of the same by the other board. [67 v. 7, § 5.]

Veto power of mayor.

SEC. 12. The votes of a majority of all the members elected to each board of the common council shall be necessary to pass any ordinance, resolution, or order in which an expenditure of money is involved; and every ordinance, resolution, or order in which an expenditure of money, or the approval of a contract for the payment of money, or for granting a franchise, or creating a right, or for the purchase, lease, sale, or transfer of property, which shall have passed both boards of the common council in separate session (except such as levying special taxes for the improvement of streets), shall, before it takes effect, be presented, duly certified by the clerk, to the mayor of the city for approval. [70 v. 18, § 1.]

His duty as to ordinances, etc.

SEC. 13. The mayor, if he approves such ordinance, resolution, order, or contract, shall sign it, but if he does not approve it, he shall return it with his objections to the board in which it originated, within ten days thereafter, or, if such board is not in session, at its next meeting thereafter, which objections the board shall cause to be entered in full on its journal: provided, that the mayor may approve the whole, or any item, or part of any such ordinance, resolution, order, or contract presented to him for his signature; and if he does not return the same within the time above limited, it shall take effect in the same manner as if he had signed it. [70 v. 18, §§ 1, 3.]

Passage of ordinance after veto.

SEC. 14. When the mayor refuses to sign any such ordinance, resolution, order, or contract, or part thereof, and returns it to the proper board with his objections, the board shall, after the expiration of not less than ten days, proceed to reconsider the same, after first notifying the other board, or the president thereof, of the action of the mayor, and if such ordinance, resolution, or order is approved by the votes

of two-thirds of all the members elected to each board, in separate session, it shall then take effect as if it had received the signature of the mayor; and in all such cases the vote of each board shall be determined by yeas and nays, and the names of the persons voting for and against the adoption of such ordinance, resolution, order, or contract shall be entered on the journal of the board. [70 v. 18, § 2.]

Joint session of the board.

SEC. 15. Where, under this title, the election or confirmation of officers or agents is made the duty of the council, the two boards shall, for that purpose, meet in joint session, and the election or appointment of all such officers or agents, or of any board created by or working under the same, shall be held immediately after the organization of the common council. [67 v. 8, § 6.]

City clerk.

SEC. 16. The city clerk shall be elected by both branches of the common council, and be the clerk of each board. [67 v. 8, § 6.]

Special meetings.

SEC. 17. The mayor, or any three members of either board, may call special meetings of either board, by notice to each member served personally, or left at his usual place of abode; and three members of the board of aldermen, uniting with five members of the board of councilmen, may, in like manner, call a joint session of the two boards. [66 v. 164, § 90; 67 v. 8, § 7.]

SUBDIVISION II. COUNCIL IN VILLAGES AND CITIES OTHER THAN CITIES OF THE FIRST AND THIRD GRADES OF THE FIRST CLASS.

Council in cities and villages.

SEC. 18. The legislative authority of villages shall be vested in a council, consisting of six members, except that in villages divided into three or more wards, such authority shall be vested in a council composed of two members from each ward; and the legislative authority of cities, except as hereinbefore provided, shall be vested in a council consisting of two members from each ward. [66 v. 163, § 82.]

Terms of office.

SEC. 19. Members of the council in office shall, unless a vacancy sooner occurs, serve until the expiration of their respective terms; at each annual municipal election, one member of the council shall be elected in each ward to serve for two years; where villages are not divided into wards, three members of council to serve for two years, shall be elected at such election; and where corporations are advanced in grade, or new corporations or new wards created, at the first election for council, the mayor, in his proclamation, shall give notice to the electors to vote, in each ward, for one member for one year, and one member for two years, designating the term on their ballots. [66 v. 163, § 85; 68 v. 53, § 410.]

Term of office, how ascertained in certain cases.

SEC. 20. When an election is held in a city or village for members of the council, and a portion of the members are to be elected for the full term, and a portion to fill vacancies, and the electors fail to designate on the ballots the length of the terms of the persons elected, the members so elected shall,

at the first regular meeting of council in May, or at such time as the council may designate, determine, by lot, the the term of office to be held by each; and in cases of cities or villages that are divided into three or more wards, such lot shall be cast between members sitting for the same ward; but in case any member of the council fails to attend at the time specified for casting lots, the mayor shall act in casting lots for such member, and the result of the determination by lot herein provided shall fix the terms of office of the members of such council as fully as though they had been originally chosen by ballot for such terms. [70 v. 163.]

First meeting of council.

SEC. 21. The mayor, or in his absence or inability, the clerk, at the hour of the first regular meeting of the council after the second Monday of April, in each year, shall call to order the members elect, and those holding over, who may be assembled; and as the members elect are called, they shall present their certificates and take the required oath; and a majority of all the members elected shall constitute a quorum for the transaction of business; and in villages, the mayor shall be president of the council, but shall have no vote, except in case of a tie, and in his absence from any meeting, the council shall appoint one of their number to perform his duties for the time being. [66 v. 164, § 86.]

Organization of council.

SEC. 22. In cities, under this subdivision, if the members elect of the council and the members holding over, then present, constitute a quorum, they shall, forthwith, proceed to organize by electing a president and president pro tempore, from their own number, a clerk, and such other officers, necessary to perfect their organization, as by ordinance may be provided; and no business shall be transacted until such organization is effected: provided, that in cities of the second class, the mayor shall be ex-officio president at the time of such organization, and in case of a tie vote in the choice of any officer at such organization, the mayor shall give the casting vote. [74 v. 143, § 87.]

Times and place of meeting.

SEC. 23. The council shall not be required to hold more than one regular meeting in each week; and the meetings may be held at such time and place as may be prescribed by ordinance, and shall, at all times, be open to the public; and the mayor, or any three members, may call special meetings upon notice to each member, served personally, or left at his usual place of abode. [66 v. 164, § 90.]

SUBDIVISION III. COUNCIL AND BOARDS OF ALDERMEN; GENERAL PROVISIONS.

Prerogative.

SEC. 24. The council shall have the management and control of the finances and property of the corporation, except as may be otherwise provided, and have such other powers and perform such other duties as may be conferred by law. [66 v. 163, § 84.]

Judge of election and qualification of members.

SEC. 25. The council, and when of two branches, each branch, shall be the judge of the election, returns, and qualifications of its own members, shall determine the rule of its procedure, and keep a journal of its proceedings, and may compel the attendance of absent members in such manner and under such penalties as may, by ordinance, be prescribed. [66 v. 164, § 88.]

Members must be residents, etc.

SEC. 26. A member of the council or board of aldermen, must be a resident of the corporation for which he is elected, and if the corporation is divided into wards or districts, then a resident of the ward or district for which he is elected; and when by reason of an alteration in the boundaries of a ward or district, the residence of a member whose term of office has not expired, is in a ward or district of a different number from the one for which he was elected, he shall, nevertheless, be deemed to represent the ward or district which, at the time of his election, included his residence; provided, that if any ward or district, by annexation or otherwise, is entirely absorbed, and its identity destroyed, the office of the alderman and councilmen thereof shall cease. [67 v. 70, § 83.]

Who ineligible.

SEC. 27. No person shall be eligible as a member of the council who holds any municipal office, or is an employé under the government of the corporation. [66 v. 165, § 93.]

Ex-officio members.

SEC. 28. The mayor, city auditor, city civil engineer, and city solicitor, shall have seats in the council and board of aldermen, and be entitled to take part in the proceedings and deliberations on all questions relating to their respective departments, subject to such rules as the council shall, from time to time, prescribe, but without the right to vote; and such officers may be compelled to attend meetings of the council or board of aldermen in the same manner as the members. [67 v. 70, § 89.]

Compensation of members.

SEC. 29. No member of the council or board of aldermen shall receive any compensation for his services, either as councilman, alderman, committeeman, or otherwise, except when acting as judge of election, when he shall receive such compensation as is provided by law for a judge of election. [67 v. 71, § 91.]

Expulsion and removal of members.

SEC. 30. A member of the council may be expelled or removed from office by a vote of two-thirds of all the members elected, and in cities where there is a board of aldermen, by a concurrent vote of two-thirds of all the members elected to the branch of which he may be a member, but not a second time for the same cause. [66 v. 165, § 94.]

Expulsion and removal of officers.

SEC. 31. An officer or agent, appointed by authority of this title, except as otherwise provided therein, may be removed from office at the pleasure of the council by a vote of a majority thereof; an officer elected may be removed from office by a concurrent vote of two-thirds of all the members elected to the council; and in case of elective officers, pro-

vision shall be made by ordinance for preferring charges, and trying the party complained of upon the same; but in no case shall such removal be made, unless a charge in writing is preferred and an opportunity given to make defense. [66 v. 165, § 94.

Process to compel attendance.

SEC. 32. For the purpose of investigating charges against members, or other officers of the corporation, or such other matters as it may deem proper, the council, or any branch thereof, or any committee of the members of either, shall have power to issue subpœnas, or compulsory process to compel the attendance of persons and the production of books and papers before the council, or either branch thereof, or any committee of the same, and shall have power to provide by ordinance for exercising and enforcing this provision. [71 v. 147, § 95.]

Oaths of witnesses.

SEC. 33. In all cases in which the attendance of witnesses may be compelled for the investigation of any matter as aforesaid, the presiding officer of the council, or a branch thereof, or chairman of such committee for the time being, shall have power to administer the requisite oaths; and such council, or a branch or committee thereof, shall have such power to compel the giving of testimony by the attending witnesses as is conferred on courts of justice. [67 v. 71, § 96.]

Testimony of witness not be used against him, etc.

SEC. 34. The oral testimony of a witness examined before the council, or a branch thereof, or a committee of the same, shall not be used as evidence in any criminal proceeding against him, except such proceeding is for perjury. [71 v. 147, § 95.]

Voting precincts.

SEC. 35. Whenever the electors in any ward exceed eight hundred, the council shall divide the ward into as many voting precincts as it may deem proper, and the combined vote of such precincts shall be returned as the vote of the ward; but this section shall not apply where provision is otherwise made by law. [71 v. 135.]

Services and supplies to be in pursuance of contracts.

SEC. 36. Except as otherwise provided in other divisions of this title, all services performed, and supplies furnished for the corporation, shall, as far as practicable, be performed and furnished in pursuance of contracts to be authorized by the council, through some appropriate officer or department of the corporation. [66 v. 261, § 659.]

Council restricted as to contracts.

SECTION 37. The council shall not enter into any contract which is not to go into full operation during the term for which all the members of such council are elected. [66 v. 261, § 660.]

CHAPTER 3.

CITIES AND VILLAGES; ENUMERATION OF POWERS.

SECTION 1. In addition to the powers specifically granted n this title, and subject to the exceptions and limitations

in other parts of it, cities and villages shall have the general powers enumerated in this section, and the council may provide by ordinance for the exercise and enforcement of the same:

Riot, gambling, etc. 1. To prevent riots, gambling, noise and disturbance, indecent or disorderly conduct or assemblages, and preserve the peace and good order, and protect the property of the municipal corporation and its inhabitants.

Billiards, nine-pins, etc. 2. To regulate billiard tables, nine or ten-pin alleys or tables, and ball alleys; and to authorize the destruction of instruments or devices used for the purpose of gaming.

Nuisances. 3. To prevent injury or annoyance from anything dangerous, offensive, or unwholesome, and to cause any nuisance to be abated.

Houses of ill-fame. 4. To suppress and restrain disorderly houses and houses of ill-fame, and provide for the punishment of all lewd and lascivious behavior in the streets and other public places.

Beer saloons. 5. To regulate ale, beer, and porter houses and shops.

Taverns. 6. To regulate taverns and other houses for public entertainment.

Theaters, lectures, etc. 7. To regulate, restrain, or prohibit theatrical exhibitions and public shows, and exhibitions of whatever name or nature, for which money or other reward is in any manner demanded or received; but lectures on historic, literary or scientific subjects shall not come within the provisions of this section.

Auction of animals. 8. To regulate or prohibit the sale of live domestic animals at public auction in the streets, alleys, highways, or any public ground within the corporation.

Auctions. 9. To regulate auctioneering, and to regulate, license, or prohibit the sale at auction of goods, wares, and merchandise imported into the corporation for the purpose of being sold at auction.

Carriages. 10. To regulate the use of carts, drays, wagons, hackney coaches, omnibuses, and every description of carriages, which may be kept for hire, and livery stables.

Animals running at large. 11. To regulate, restrain, and prohibit the running at large within the corporation, of cattle, horses, swine, sheep, goats, geese, and other animals, and to impound and hold the same; and, on notice to the owners, to authorize the sale of the same, or any portion thereof, for the penalty imposed by any ordinance, and the costs and expenses of the proceedings.

Dogs. 12. To regulate or prohibit the running at large of dogs, and provide against injuries and annoyances therefrom, and to authorize the destruction of the same when running at large, contrary to the provisions of any ordinance to that effect.

Fast driving. 13. To prevent and punish fast driving or riding of ani-

mals, or fast driving or propelling of vehicles, through the public highways.

14. To regulate the transportation and keeping of gunpowder, and other explosive and dangerous combustibles, and to provide or license magazines for the same. Explosives.

15. To regulate the transportation of articles through the streets, and prevent injuries to the streets from overloaded vehicles. Transportation.

16. To regulate the weighing and measuring of hay, wood, coal, and other articles exposed for sale. Weighing.

17. To guard against injuries by fire. Fire.

18. To lay off, establish, open, widen, narrow, straighten, extend, improve, keep in order and repair, and to light, streets, alleys, public grounds and buildings, wharves, landing places, bridges, and market spaces within the corporation, including any portion of any turnpike or plank road therein, surrendered to or condemned by the corporation; and to provide for laying down gas-pipes. Streets. Gas-pipes.

19. To construct, open, enlarge, excavate, improve, deepen, straighten, or extend any canal, ship canal, or water course, located in whole or in part within the corporation. Canals.

20. To regulate the cleaning and sprinkling of streets, alleys, and public grounds. Street cleaning.

21. To open, construct, and keep in repair, sewers, drains, and ditches. Sewers.

22. To establish, repair, and regulate water-closets and privies. Privies.

23. To erect, establish, regulate, and repair pest-houses, hospitals, and infirmaries. Hospitals.

24. To establish a board of health, and invest it with such powers, and impose upon it such duties as may be necessary to secure the inhabitants from the evils of contagious, malignant and infectious diseases. Board of health.

25. To build jails, or other places of confinement, and to regulate the same. Jails.

26. To erect market-houses, and to establish and regulate markets. Markets.

27. To regulate the erection of buildings, fences, and other structures within the corporate limits. Erection of buildings.

28. To provide public cemeteries, and for the improvement and protection thereof, and to regulate the burial of the dead. Cemeteries.

29. To organize and maintain a police department. Police.

30. To organize and maintain a fire department, erect necessary buildings therefor, and to purchase and hold all necessary hose, engines, carts, ladders, carriages, tools, and implements therefor. Fire department.

31. To provide for a supply of water, by the construction of wells, pumps, cisterns, aqueducts, water-pipes, reservoirs, and water works, and for the protection thereof; and to prevent unnecessary waste of water, and the pollution thereof. Water.

Parks. 32. To hold and improve public grounds and parks, and to provide for the protection and preservation of the same.

Appropriation of property. 33. To appropriate private property for the use of the corporation.

Power to purchase, etc. 34. To acquire, by purchase or otherwise, and hold real estate, or any interest therein, and other property, for the use of the corporation, and to sell or lease the same.

Schools. 35. To erect and maintain buildings for public schools.

Halls. 36. To erect and maintain public halls.

Libraries. 37. To establish and maintain free public libraries and reading rooms; and to purchase books, papers, maps, and manuscripts therefor, and to receive donations and bequests of money or property for the same, in trust or otherwise; and the council may appoint such trustees or officers, and confer upon them such authority, as may be necessary to render any reading room so established of public utility; and may also pass necessary by-laws and regulations for the protection and government of the same.

Ferries. 38. To license and regulate ferries within the corporate limits. [72 v. 107, § 199.]

Bequests. 39. To accept bequests made by will, upon conditions and limitations contained in the will; and any city or village accepting such a bequest shall be bound to faithfully carry out all the stipulations of the will in relation to the bequest, and the council of any such city or village is hereby authorized to make any and all rules and regulations by ordinance that may be required to carry out fully all the provisions of the will in relation to the bequest. [73 v. 205, § 1.]

CHAPTER 4.

ORDINANCES, RESOLUTIONS, BY-LAWS: HOW ADOPTED.

SECTION
1. Adoption of ordinances, etc.
2. Must be read three times, unless, etc.
3. Subject and amendment of by-laws, etc.
4. Recording and publishing by-laws, ordinances, etc.

SECTION
5. Statement as to publication.
6. Mode of publication.
7. Effect of non-publication.
8. By-laws, ordinances, etc., as evidence.

Adoption of ordinances, etc. SECTION 1. Ordinances, resolutions, and by-laws shall require for their passage or adoption the concurrence of a majority of all the members elected, and the vote on their passage or adoption shall be taken by yeas and nays, and recorded on the journal; and no contract, agreement, or obligation shall be entered into, except by an ordinance or resolution of the council, nor any appropriation of money for any purpose be made except by an ordinance; every ordinance appropriating money shall contain an explicit statement of the uses

and purposes for which the appropriation is made; the power, or authority to make a contract, agreement, or obligation to bind the corporation, or to make an appropriation, shall not be delegated; and every contract, agreement, or obligation, and every appropriation of money made contrary to the provisions of this section shall be void as against the corporation, but binding on the person or persons making it; but this section shall not be construed to impair the power of the board of public works in any city to make contracts, or impair the power to contract, whenever elsewhere given in this title; or to delegate the power to execute such contracts. [73 v. 126, § 97.]

Must be read three times, unless, etc.

SEC. 2. By-laws, resolutions, and ordinances, of a general or permanent nature, shall be fully and distinctly read on three different days, unless three-fourths of the members elected dispense with the rule; and the vote on such suspension shall be taken by yeas and nays, and entered on the journal. [66 v. 166, § 98.]

Subject and amendment of by-laws, etc.

SEC. 3. No by-law or ordinance shall contain more than one subject, which shall be clearly expressed in its title; and no by-law or ordinance, or section thereof, shall be revived or amended, unless the new by-law or ordinance contain the entire by-law or ordinance, or section revived or amended; and the by-law or ordinance, section or sections, so amended, shall be repealed. [66 v. 166, § 99.]

Recording and publishing by-laws, ordinances, etc.

SEC. 4. By-laws, resolutions, and ordinances shall be authenticated by the signature of the presiding officer and clerk of the council; ordinances of a general nature, or providing for improvements, shall be published in some newspaper of general circulation in the corporation; if a daily, twice, and if a weekly, once, before going into operation; no ordinance shall take effect until the expiration of ten days after the first publication of such notice; and as soon as any by-law, resolution, or ordinance is passed and signed, it shall be recorded by the clerk in a book to be furnished by council for the purpose. [67 v. 68, § 100.]

Statement as to publication.

SEC. 5. Immediately after the expiration of the period of such publication, the clerk shall enter on the record of ordinances, in a blank to be left for such purpose, under the recorded ordinance, a certificate stating in what newspaper and of what dates such publication was made, and sign his name thereto officially, and such certificate shall be prima facie evidence that legal publication of such ordinance has been made. [66 v. 166, § 101.]

Mode of publication.

SEC. 6. In a corporation in which there is no newspaper published, publication of an ordinance may be made by posting up copies of it at not less than five of the most public places in the corporation, for a period of not less than fifteen days prior to the taking effect of such ordinance; and the clerk shall make a certificate of such posting, and the times when, and places where done, in the manner provided in the

preceding section; and such certificate shall be prima facie evidence that the copies were posted up as required. [66 v. 166, § 102.]

Effect of non-publication.

SEC. 7. It shall be deemed a sufficient defense to any suit or prosecution under an ordinance, to show that no such publication or posting as herein required, was made. [66 v. 166, § 103.]

By-laws, ordinances, etc., as evidence.

SEC. 8. The printed copies of the by-laws or ordinances of a corporation, published under its authority, and transcripts of any by-laws, resolutions, or ordinances, or of any act or proceeding of a municipal corporation, recorded in any book, or entered on any minutes or journal, kept under the direction of such corporation, and certified by its clerk, shall be received in evidence, through the state, for any purpose for which the original books, ordinances, minutes, or journals would be received. [66 v. 166, § 104.]

FOURTH DIVISION. EXECUTIVE OFFICERS.

CHAPTER 1. OFFICERS OF HAMLETS.
CHAPTER 2. OFFICERS OF CITIES AND VILLAGES.
CHAPTER 3. ELECTION AND REMOVAL OF OFFICERS.
CHAPTER 4. QUALIFICATION, OATH, AND BOND.
CHAPTER 5. POWERS AND DUTIES.

CHAPTER 1.

OFFICERS OF HAMLETS.

SECTION
1. Officers other than trustees.
2. Bond; its approval, record, etc.
3. Duties of clerk; his fees.
4. Duties of marshal; his fees.
5. No compensation to trustees as such.
6. As to incumbents, existing by-laws, etc.

Officers other than trustees.

SECTION 1. The trustees of hamlets shall have power to appoint, either from their own body, or the electors of the corporation, a clerk, who shall act as treasurer, and a marshal, who shall act as supervisor, and such other police officers as may be necessary; and they shall, by proper by-laws, resolutions, and ordinances, prescribe the duties and compensation of the officers so appointed, and they may remove any such officer and appoint another at their discretion; and the president of the board of trustees shall have the same powers and perform the same duties as are prescibed for mayors of villages, by chapter five, division four, of this title, except that he shall receive no compensation for his services except those allowed for similar services to justices of the peace. [73 v. 170, § 49.]

Bond; its approval, record, etc.

SEC. 2. The clerk and marshal shall each give bond to the corporation for the faithful performance of his duties, which bond shall be in such amount as the trustees may determine, and it shall be subject to their approval, and, after being recorded in the office of the township clerk, shall remain in their custody; but if a trustee is principal in such bond, the duties with respect to it shall be performed by the other trustees. [66 v. 159, § 58.]

Duties of clerk; his fees.

SEC. 3. The clerk shall keep a full record of all the proceedings of the board of trustees, and in his capacity of treasurer, shall have custody of all moneys of the corporation, and disburse the same on the orders of the trustees alone; and he shall be entitled to the same fees that township clerks and township treasurers receive. [66 v. 159, § 58.]

Duties of marshal; his fees.

SEC. 4. The marshal shall be chief of police, and have the powers of marshals in villages, and for his services as such shall receive the same fees, and be paid in the same manner as marshals in other municipal corporations for like services; and for his services as supervisor, in which office he shall act under the direction of the trustees, he shall be paid out of the proper township treasury or treasuries the same compensation allowed to other supervisors. [66 v. 159, § 55.]

No compensation to trustees as such.

SEC. 5. The members of the board of trustees, in their capacity as such, or as trustees, shall receive no compensation. [66 v, 159, § 55.]

Time incumbents to remain in office, and by-laws, etc., to remain in force.

SEC. 6. Trustees and officers of incorporated villages for special purposes, shall continue in office as trustees and officers of the proper hamlets until their successors are elected and qualified; and all by-laws, resolutions, and ordinances of such incorporated villages for special purposes, whether originally adopted by them, or by special road districts, shall remain in force as the by-laws, resolutions, and ordinances of the proper hamlets, until repealed. [66 v. 159, § 57.]

CHAPTER 2.

OFFICERS OF CITIES AND VILLAGES.

SECTION
1. Village officers.
2. Officers of cities of second class.
3. Officers of cities of first class.
4. Terms of office.
5. Additional offices.
6. How appointments made.
7. Additional duties.
8. Vacancies: how filled; incumbents to serve till successors qualified.
9. As to special election where office is created.
10. Removal a resignation, when.
11. Fees, etc., when fixed by council.
12. Change in fees, effect of.
13. Election of assessors.
14. Election of justices of the peace and constables.
15. Board of revision; its duties.
16. Oath, bond, etc., of county treasurers; examination of funds.
17. Official board not to appoint one of its members to office.

Village officers.

SECTION 1. The officers of a village shall consist of a mayor, clerk, treasurer, and marshal; and the council may, when in its opinion expedient, create, by ordinance, the offices of solicitor and street commissioner; and all officers shall be elected by the electors of the village. [66 v. 160, § 59.]

Officers of cities of the second class.

SEC. 2. The officers of a city of the second class shall consist of a mayor, marshal, solicitor, a city commissioner, who shall be superintendent of streets and highways, and a treasurer, except as provided in the next section, all of which officers shall be chosen by its electors, and a clerk, who shall be chosen by the council; and the council may, when in its opinion expedient, create, by ordinance, the office of auditor, civil engineer, fire engineer, and superintendent of markets, and provide for their election or appointment and compensation; provided, that the provisions as to a marshal shall be subject to the provisions contained in the fourth subdivision of chapter five, of the fifth division of this title. [67 v. 68, § 60.]

Officers of cities of the first class.

SEC. 3. In cities of the first grade of the first class there shall be a mayor, solicitor, treasurer, police judge, prosecuting attorney of the police court, and a clerk of that court, which officers shall be chosen by the electors; a superintendent of the markets, who shall be appointed by the mayor, with the assent of the council; a clerk who shall be elected by the common council, and an auditor who shall be elected by the board of public works of such city; and in cities of the second and third grades of the first class the same officers shall be chosen in the same manner, excepting that the auditor shall be elected by council; and also a street commissioner, who shall be chosen by the electors, and a civil engineer, who shall be elected by the council; and in cities of the third grade of the first class there shall be a fire engineer appointed by the mayor, with the assent of the council; provided, that in cities of the third grade of the first class, and in cities of the second class embracing a county seat, there shall be no election for city treasurer, but the county treasurer shall act as city treasurer, at a rate of compensation to be determined by the county commissioners, but not exceeding five hundred dollars a year. [69 v. 64, § 61; 74 v. 52, § 8.]

Term of office.

SEC. 4. Officers who are elected shall serve two years, except the clerk of the police court who shall serve three years, except that in cities of the first class, the city auditor shall serve three years; in cities of the second and third grades of the first class, the civil engineer shall serve three years; in cities of the second grade of the first class, the solicitor shall serve four years; and all officers who are appointed shall serve one year, except as otherwise provided in this title. [74 v. 74, § 62.]

SEC. 5. The council may provide for the appointment, or

election by the electors of the corporation, wards or districts, as the case may require, of such other officers as it may deem necessary for the good government of the corporation, and the full exercise of its corporate powers. [66 v. 160, § 63.] Additional offices.

SEC. 6. Except as otherwise provided in this title, the appointment to every office created by law or ordinance shall be made by the mayor with the advice and consent of the council; the concurrence of a majority of all the members elected shall be required to confirm an appointment; and on every vote resulting in a confirmation, the names of those voting, and how they voted, shall be recorded: provided, that the auditor, city clerk, solicitor, treasurer, and clerk of the police court, in cities of the first class, and civil engineers in cities of the second and third grades of the first class, shall each appoint his assistants, subject to the confirmation of the council. [67 v. 69, § 64.] How appointments made.

SEC. 7. Officers whose powers and duties are not defined in this title, shall perform such duties, and exercise such powers as may be prescribed by ordinance. [66 v. 161, § 65.] Additional duties.

SEC. 8. Unless otherwise provided in this title, when an office filled by the electors of the corporation becomes vacant, the mayor shall, with the advice and consent of the council, fill the vacancy until the next annual municipal election, when a successor shall be elected for any unexpired part of the term, unless the vacancy occurs within ten days of such election, in which event the appointment shall be for the unexpired term: provided, that if more than sixty days intervene between the next annual municipal election and the time any office, filled by the electors of the corporation, becomes vacant, the council may, in its discretion, require that a special election be held to fill the vacancy, of which election the mayor shall give public notice for at least ten days; and unless otherwise provided in this title, when in an office filled by the council, or by appointment, a vacancy occurs, it shall be filled for the unexpired term by the council, or by the board or officer making the appointment, as the case may be; and, unless otherwise provided, all municipal officers shall serve until their successors are qualified. [66 v. 161, § 66.] Vacancies, how filled. Incumbent to serve till successor qualified.

SEC. 9. When an office is created, and made elective by the electors of the corporation, and more than sixty days will elapse before the annual municipal election, the council may provide for a special election to fill such office, of which election at least ten days' public notice shall be given by the mayor; but if council do not provide for such special election, or sixty days will not intervene between the time of creating such office and such election, the mayor shall, unless it is otherwise provided, fill the office by appointment unless [until] such election, at which time it shall be filled, as in other cases, by election. [69 v. 181, § 71.] As to special election where office is created.

SEC. 10. When an officer removes beyond the limits of

When removal a resignation.

the corporation, the act shall be deemed a resignation, and the vacancy shall be filled as in other cases; but this provision shall not apply to the city solicitor or police judge. [68 v. 115, § 67.]

Fees, etc., when fixed by council.

SEC. 11. Officers of municipal corporations who are not prohibited from receiving compensation, or whose compensation is not provided for by law, shall receive such fees or compensation for their services as the council may prescribe. [66 v. 161, § 68.]

Change in fees, effect of.

SEC. 12. The emoluments of an officer whose election or appointment is provided for in this title, shall in no case be increased or diminished during the term for which he may be elected or appointed; nor shall any change in compensation affect any officer, whose office is or may be created under authority of this title, during his term, unless the office is abolished; and a person who resigns or vacates an office shall not be eligible to the same, during the time for which he was elected or appointed, when during the time the emoluments are increased; and no member of council shall be eligible to any other office, or to a position on any board provided for in this chapter [title], or created by law, or ordinance of council, except as provided in the seventh division of this title. [67 v. 69, § 69.]

Election of assessors.

SEC. 13. At each annual municipal election, an assessor shall be elected in each ward, or precinct where a ward is divided, and in each municipal corporation not divided into wards, which forms an election district, who shall take the same oath, give the same bond and perform the same duties as are provided with respect to township assessors. [56 v. 156, § 1; S. & C. 85.]

Election of justices of peace and constables.

SEC. 14. Where the limits of a municipal corporation are coextensive with the limits of the township, and the township becomes merged in the municipal corporation, the corporate existence of such township shall, nevertheless, continue for the purpose of electing the same number of justices of the peace and constables for such township, who shall be voted for on the same ballot; provided, that in cities of the second grade of the first class, and in cities of the second class, the corporate limits of which are coextensive with the township, justices of the peace and constables for such township shall be voted for on the same ticket with officers for such city; and the municipal officers holding such election shall proceed in the same manner, and make like returns, as in case of election for justices and constables held by the trustees and clerks in the townships. [69 v. 23; 56 v. 81, § 2; S. & C. 766.]

Board of revision; its duties.

SEC. 15. The mayor, the president of the council, and the solicitor of the corporation, shall constitute a board of revision, which shall meet as often as once in every month, to review the proceedings of the council, and of all other departments of the corporation government, and report to the

council whether any department of such government has transcended its powers, whether any officer has neglected his duties, and whether any and what retrenchment in the expenses of the corporation, and what improvement in any department of the corporation government, can be made. [66 v. 261, § 658.]

Oath, bond, etc., of county treasurer; examination of funds.

SEC. 16. In all cases where the treasurer of a county becomes treasurer of the city and school funds by virtue of other provisions of this title, he shall qualify in every respect as if he were elected to the office, by taking the official oath and giving separate bonds acceptable severally to the city council and school board of such city; and in all examinations of the county funds by the auditor and county commissioners, as provided by law, there shall at the same time, and in the same manner, be an examination of the city and school funds by at least one person for each fund, who shall be appointed by the county commissioners; and in examinations of the county treasury by order of the probate judge, the accountant appointed by the judge shall count, examine and certify as to the condition of the city and school funds at the same time, and in the same manner, as required by law in regard to the county funds. [70 v. 66, § 1.]

Official board not to appoint one of its members to office.

SEC. 17. In cities of the first class it shall be unlawful for any official board to appoint any member of it to any position within its gift, unless otherwise provided by law, or for any member of such board to receive any such position from such board which shall require an expenditure or the payment of any money from funds belonging to the city or any of its departments. [72 v. 27.]

CHAPTER 3.

ELECTION OF OFFICERS.

SECTION
1. Time of annual election.
2. Special election: filling vacancies.
3. Designation of election places.
4. Mayor's election proclamation.
5. Who are electors.
6. Election returns: when opened.
7. Abstract of votes.
8. Judges and clerks of election.
9. Tie vote; decision by lot.
10. Charge of malfeasance, etc., in office.
11. Proceedings on citation of probate judge.
12. Challenge of jurors.
13. The trial.
14. Removal of officer, if found guilty.

Time of annual election.

SECTION 1. The first Monday of April shall be the regular annual period for the election of officers of municipal corporations. [66 v. 161, § 70.]

Special election: filling vacancies.

SEC. 2. When a vacancy happens in the members of council, or board of aldermen, a special election shall be held within twenty days thereafter, unless the annual municipal election occurs within sixty days after the vacancy; and the

mayor shall designate the time and place, or places, of such election, but at least ten days' public notice of it shall be given; provided, that in a village, the mayor, by and with the consent of the council, shall have power to fill vacancies in the board from the electors of the corporation, to serve for the unexpired term. [69 v. 181, § 71.]

Designation of election

SEC. 3. The council of every municipal corporation shall designate the place or places for holding the regular elections; and in all corporations divided into wards, there shall be a place or places in each ward designated for holding elections. [67 v. 70, § 72.]

Mayor's election proclamation.

SEC. 4. The mayor, previous to any election for a municipal officer or officers, shall issue a proclamation to the electors of the corporation, or of the respective wards or districts, as the case may require, setting forth the time and places of election, and the officers to be chosen, and cause such proclamation to be published in some newspaper printed in the corporation, at least ten days previous to the election, or, if no such newspaper is published in the corporation, such notice may be given by posters. [66 v. 161, § 73.]

Who are electors.

SEC. 5. A person who, at the time of an election for municipal officers, is an elector for county officers, and resides in the ward, or corporation, if there be no wards, in which he offers to vote, is a qualified elector; and the elections shall be held and conducted, in all respects, in the manner prescribed by law in case of township elections. [66 v. 162, § 74.]

Election returns: when opened.

SEC. 6. Returns of municipal elections, in corporations which are divided into election districts or wards, shall be made to the clerk of the corporation, and be opened by him within the time prescribed for the opening, by the clerk of the court of common pleas, of the returns of county elections. [66 v. 162, § 75.]

Abstract of votes.

SEC. 7. The clerk, or in his absence or disability, some person to be selected by the council, shall call to his assistance the mayor, and, in his presence, make an abstract and ascertain the candidates elected, in all respects as required by law of the clerk of the court of common pleas with respect to county officers; and he shall, in like manner, make a certificate as to each candidate so elected, and cause the same to be delivered to him, or left at his usual place of abode: provided, that if there is no mayor, or the mayor is absent, or disabled, or a candidate at such election, the clerk shall call to his assistance a justice of the peace of the county. [66 v. 162, § 76.]

Judges and clerks of election.

SEC. 8. At elections in corporations which are not divided into election districts or wards, the mayor and council, any three of whom shall be a quorum, shall serve as judges, and the clerk shall serve as clerk; and after canvassing the votes given at such election, the judges shall declare the result,

and the clerk shall make and deliver to each person elected, a certificate of such election. [66 v. 162, § 77.]

The vote: decision by lot.

SEC. 9. If the result can not be determined from the votes cast, for the reason that more than the number of persons to be elected have an equal number of votes for the same office, then the officers whose duty it is to ascertain the persons elected, shall determine by lot which of such persons shall be declared elected; and the election of any municipal officer, except a member of the council, may be contested in the manner provided by law for contesting the election of justices of the peace, except in cities of the first grade of the first class, such election may be contested only in the manner provided for contesting the election of county officers. [67 v. 70, § 78.]

Charge of malfeasance, etc., in office.

SEC. 10. On complaint, under oath, filed with the probate judge of the county in which the corporation, or the larger part thereof, is situated, by any elector of the corporation, signed and approved by four other electors thereof, charging that any member of the council or alderman has received, directly or indirectly, any compensation for his services as councilman, alderman, committeeman, or otherwise, contrary, to the provisions of section twenty-nine, chapter two, of the third division of this title, or that any alderman, member of the council, or any officer of the corporation, is or has been interested, directly or indirectly, in the profits of any contract, job, work, or services, or is or has been acting as commissioner, architect, superintendent, or engineer in any work undertaken or prosecuted by the corporation contrary to the provisions of section forty-three, chapter eight, title one of part four of this revision, or that any alderman, member of council, or any officer of the corporation has been guilty of misfeasance or malfeasance in office, such probate judge shall forthwith issue a citation to such party, charged in the complaint, for his appearance before him within ten days from the filing of such complaint, and also furnish the accused and city solicitor with a copy thereof: provided, that the probate judge shall require the party complaining to furnish sufficient security for costs before acting upon such complaint. [68 v. 113, § 1.]

Citation by probate judge.

Proceedings thereon.

SEC. 11. On the day fixed by such judge for the return of the citation, it shall be the duty of the solicitor to appear on behalf of the complainant to conduct the prosecution, and the accused may also appear by counsel, and a time shall be set for hearing the case, which time shall not be more than ten days after such return; and if a jury is demanded by either party, the probate judge shall direct the summoning of twelve men, in the manner provided in the seventh division of this title: provided, that in villages and cities in which there is no office of solicitor, or where the solicitor is accused of any misfeasance or malfeasance in his office, it is hereby made the duty of the prosecuting attorney of the

county to appear on behalf of such complainant to conduct the prosecution. [68 v. 113, § 2.]

Challenge of jurors.

SEC. 12. On the day fixed for the trial, if a jury is impaneled, either party may, in addition to the peremptory challenges allowed by law in other cases, object, for good cause, to any juryman summoned; and any vacancies occurring for any cause, may be filled by the probate judge from the bystanders, until the panel is full, unless the party charged, or his counsel, demand a special venire to fill such vacancy. [68 v. 113, § 3.]

The trial.

SEC. 13. On the day designated for the trial, it shall take place, unless continued, on affidavit for good cause, to another fixed time, not exceeding ten days; and on the trial it shall be the duty of the solicitor to appear for the prosecution, examine witnesses designated by the complainant, and such others as he may discover, and either party may have process from the probate judge to compel the attendance of witnesses. [68 v. 114, § 4.]

Removal of officer, if found guilty.

SEC. 14. If the charges in the complaint are sustained on the trial by the verdict of the jury, or the decision of the probate judge when there is no jury, such judge shall enter the charges and findings thereon upon the record of the court, and make an order removing such officer from office, and forthwith transmit a certified copy of the same to the presiding officer of the council, whereupon the vacancy shall be filled as provided by law; and the cost and expenses of the trial shall be charged upon the party filing the complaint, the accused, or the municipal corporation, or apportioned among them, as the judge may see fit to direct, and shall be collected as in other cases: provided, no costs or expenses shall be charged to the accused, if upon such trial he is acquitted; and provided further, that if proceedings in error are instituted by the officer complained of, to reverse or vacate the order of the probate court, such officer shall not exercise the functions of his office until such order is finally reversed or vacated. [68 v. 114, § 5.]

Costs.

CHAPTER 4.

OFFICERS OF MUNICIPAL CORPORATIONS: THEIR QUALIFICATIONS, OATH, AND BOND.

SECTION
1. Qualification; oath.
2. Official bond; defenses.
3. Approval of bond; additional bond.
4. Effect of failure to take oath or give bond.
5. If new bond required, notice to be given.
6. Office vacant if notice not complied with.
7. How sureties affected.

Qualification; oaths.

SECTION 1. Each officer of the corporation, or of any department or board thereof, whether elected or appointed, including a person appointed as a substitute for a regular officer, shall be an elector within the corporation, except as herein expressly provided, and before entering upon his official duties, shall take an oath or affirmation to support the constitution of the United States and the constitution of the state of Ohio, and an oath or affirmation that he will faithfully, honestly, and impartially discharge the duties of the office; and the provisions as to the official oath shall extend to deputies, but they need not be electors. [66 v. 162, § 79]

Official bonds.

SEC. 2. The official bonds of all municipal officers shall be prepared by the solicitor; they shall, except as otherwise provided in this title, be in such sum as the board of trustees or council shall prescribe, by general or special ordinance, and be subject to the approval of the mayor, except that the mayor's bond shall be approved by the council, or if it is not legally organized, by the clerk of the court of common pleas of the county in which the corporation or the larger part thereof is situate; the condition that the person elected or appointed shall faithfully perform the duties of the office, shall be sufficient; and the fact that the instrument is without a seal; that blanks, like the date or amount, have been filled subsequent to the execution of it, but before its acceptance, without the consent of the sureties; that all the obligees named in the instrument have not signed it; that new duties have been imposed on the officer; or that any merely formal objection exists, shall not be available in any suit on the instrument. [66 v. 163, § 81; 74 v. 142, § 80]

Approval of bond; additional bond.

SEC. 3. Each officer named in chapter two of this division, and all others, except as in this title provided, who may be required so to do, by law or ordinance, shall give bond, before entering on the duties of the office; each officer may be required by the council, in its discretion, at any time, to give a new or additional bond; each bond, except the bond of the clerk, shall, upon its approval, be delivered to the city clerk, who shall immediately record the same in a record provided for that purpose, and file and carefully preserve the same in his office; and the bond of the clerk shall be delivered to the city auditor, who shall in like manner record and preserve the same. [74 v. 142, § 80.]

Effect of failure to take oath or give bond.

SEC. 4. The council may declare vacant the office of any person elected or appointed to an office who shall fail to take the oaths required in section one of this chapter, or to give any bond required of him, within ten days after he has been notified of his appointment, or election, or obligation to give a new or additional bond, as the case may be. [67 v. 70, § 80.]

SEC. 5. When the council declares, by resolution, that an

If new bond required, notice to be given.

officer shall give a new bond, written notice shall be served by the clerk of the corporation upon the officer designated, and a copy of the notice, with a statement of the time and place of service, shall be recorded in the proceedings of the council. [74 v. 114, § 2]

Office vacant if notice not complied with.

SEC. 6. If the officer fail to give such new bond, with sureties, to the satisfaction of the council, within ten days after such service, the council shall declare the office vacant, and the vacancy shall be filled in the manner provided in this title. [74 v. 114, § 2]

How sureties affected.

SEC. 7. When the new bond is accepted, or the council declares the office vacant, the sureties in the original bond shall cease to be liable for the acts of the officer done thereafter, but not for acts then already done. [74 v. 114, § 3.]

CHAPTER 5.

CITY AND VILLAGE OFFICERS: POWERS AND DUTIES.

SECTION
1. *Mayor:* his jurisdiction, powers, etc.
2. Duties, fees, office, etc.
3. Further duties.
4. Supervision of conduct of officers, etc.
5. Mayor to record his protest against excess.
6. Suspension of officers for neglect, etc.
7. Annual report to council.
8. Disposition of fines, etc.
9. Appeal from decision of mayor.
10. Salary, etc., of mayor.
11. Vacancy: how filled.
12. *Clerk:* his duties.
13. He shall make a record.
14. And post or publish it.
15. Shall report to state auditor, etc.
16. Shall certify to court.
17. Clerk of court shall record, etc.
18. Penalty for neglect.
19. When clerk shall perform duties of auditor.
20. Shall deliver books, etc., to city auditor.
21. Corporation seal.

SECTION
22. *Auditor:* his powers and duties.
23. Have charge of books, etc.
24. *Treasurer:* his powers and duties.
25. Further duties.
26. Quarterly account.
27. Compensation.
28. Duty of county treasurer.
29. Where village or township funds may be deposited.
30. Duty of outgoing treasurer as to delivering money, etc., to successor.
31. *Solicitor:* his duties.
32. Shall give opinion.
33. Pay over money.
34. Shall apply for injunction in certain cases.
35. When tax-payer may institute suit.
36. Final order in such case.
37. Solicitor's report.
38. His salary.
39. *Street commissioner, civil engineer, superintendent of police:* their duties and compensation.

THE MAYOR.

Jurisdiction, powers, etc., of mayor.

SECTION 1. The mayor shall be a conservator of the peace throughout the corporation; and within the limits of the same shall have all the jurisdiction and powers of a justice of the peace in all civil cases, and his proceedings therein may be reviewed in the same manner, and he shall have

jurisdiction in criminal cases as hereinafter provided. [66 v. 169, § 114.]

Duties, fees, office, etc.

SEC. 2. He shall keep a docket, and shall be entitled to receive the same fees that are or may be allowed justices of the peace for similar services; and he shall keep an office at some convenient place in the corporation, to be provided by the council, and shall be furnished by the council with the corporate seal of the corporation, in the center of which shall be the words, "Mayor of the city of ———," or, 'Mayor of the village of ———," as the case may be. [66 v. 169, § 115.]

Further duties.

SEC. 3. He shall perform all the duties prescribed by the by-laws and ordinances of the corporation; and it shall be his special duty to see that all ordinances, by-laws, and resolutions of the council are faithfully obeyed and enforced; and he shall sign all commissions, licences, and permits granted by authority of the council, or authorized by this title, and such other instruments as by law or ordinance may require his certificate. [66 v. 169, § 116.]

ision of conduct of officers.

SEC. 4. He shall supervise the conduct of all the officers of the corporation, inquire into and examine the grounds of all reasonable complaints against any of them, and cause all their violations or neglect of duty to be promptly punished or reported to the proper authority for correction. [66 v. 169, § 119.]

Mayor to record his protest against excess of expenditure.

SEC. 5. If, in the opinion of the mayor, an expenditure is authorized by the council exceeding the revenues of the corporation for the current year, it shall be his duty to protest against such expenditure, and enter such protest, and the reason therefor, on the journal of the council. [66 v. 261, § 657.]

Suspension of officers for neglect, etc.

SEC. 6. He shall, unless otherwise provided, have power to suspend from office any lieutenant of police, or any officer appointed by him under the authority of any law or ordinance, for neglect of duty, misconduct in office, or other sufficient cause, and may appoint other persons to fill the temporary vacancy occasioned thereby; and all such suspensions, and the cause thereof, and all such appointments, shall be by him reported to the council for their action at the next regular meeting thereafter; but this section shall be subject to the provisions of the first four subdivisions of chapter five, division five, of this title, so far as they are inconsistent with the power here granted to the mayor. [66 v. 170, § 121.]

Annual report to council.

SEC. 7. He shall, at the first regular meeting of the council in April of each year, and at such other times as he may deem expedient, report to the council concerning the affairs of the corporation, and recommend such measures as to him may seem proper. [66 v. 179, § 122.]

Disposition of fines, etc.

SEC. 8. All fines and forfeitures which may be collected by the mayor, or which may in any manner come into his hands, and all moneys which may be received by him in his

official capacity, other than his fees of office, shall be by him paid over to the treasury of the corporation weekly; and at the first regular meeting of the council in each and every month, he shall submit a full statement of all such moneys received, from whom and for what purpose received, and when paid over; but all fines, penalties, and forfeitures collected by him in state cases shall be by him paid over to the county treasurer monthly. [66 v. 170, § 123.]

Appeals from decision of mayor.

SEC. 9. Appeals may be taken from the decision of the mayor in civil cases, in the same manner as from justices of the peace: provided, that when a city or village extends into two or more counties, the appeal shall be taken to the court of common pleas of the county in which one or more of the defendants reside. A conviction under any ordinance of any municipal corporation may be reviewed by petition in error in the same manner and to the same extent as was heretofore permitted on writs of error and certiorari, and the judgment of affirmance or reversal may be reviewed in the same manner; but no such petition shall be filed except on leave of the court or a judge thereof, and such court or judge shall have power to suspend the sentence, as in criminal cases. [65 v. 170, § 125; 72 v. 42]

Salary, etc., of mayor.

SEC. 10. The mayor shall, in addition to the fees he may be entitled to, receive such salary, payable quarterly out of the corporation treasury, as may be provided by ordinance; but the amount of such salary shall neither be increased nor diminished during his term of office. [66 v. 170 § 126]

Vacancy: how filled.

SEC. 11. In case of the death, resignation, disability, or other vacation of his office, the council may, by the vote of a majority of all the members elected, appoint some suitable person within the corporation to act as mayor, and discharge the duties of the office until the vacancy is filled, or the disability removed: provided, that at the next annual municipal election occurring more than thirty days after such vacancy, a mayor shall be elected for any unexpired term, unless the disability is of a temporary character. [66 v. 171, § 127.]

THE CLERK.

Duties of clerk, etc.

SEC. 12. The clerk shall attend all the meetings of the council and make a fair and accurate record of all its proceedings, and of all rules, by-laws, resolutions, and ordinances passed by the council, and the same shall be subject to the inspection of all persons interested; and in case of his absence from any meeting, the council shall appoint one of its own number to perform his duties for the time. [66 v. 171, § 128.]

Duties of city clerk as to record of receipts and expenditures.

SEC. 13. He shall, on or before the third Monday in March of each year, make, and enter in the record book of the corporation, an account of all the receipts and expenditures of the corporation of the preceding year, stating from

what sources the money was received, and for what purposes expended, and showing the exact condition of the several funds of the corporation. [67 v. 71, § 129.]

Statement to be posted.

SEC. 14. He shall cause a condensed statement of such account, which shall be approved by the mayor, to be posted at the places of holding elections for officers of the corporation, on the first Monday of April, annually; and the clerk shall publish the same in some newspaper published or of general circulation in the corporation, at least five days prior to the first Monday of April; and upon the order of the council, the clerk shall, at any time, furnish to it a detailed statement of all receipts and disbursements, for such periods as it may require. [67 v. 71, § 130.]

Report to auditor of state, etc.

SEC. 15. He shall, on or before the first Monday of June, in each year, report to the auditor of state the aggregate expenses of the corporation for the preceding year, under the following heads: school, police, streets, bridges, fire department, lights, poor, salaries, and interest; and also the amount of the general corporation tax for all the preceding objects, and for any others not enumerated, and the special taxes levied and collected by the corporation for the same period: provided, that the city auditor, in any city having such officer, shall perform the duties imposed upon the clerk by this and the two preceding sections. [67 v. 71, § 131.]

Shall certify to the court, election of certain officers.

SEC. 16. He shall certify to the court of common pleas of the county in which the corporation is situated, the election of every officer of the corporation having power to discharge the duties of a justice of the peace, or to take the acknowledgment of deeds, or to certify depositions or affidavits to be used within the limits of such corporation, with the date of such election, and the time when such officer became legally qualified to discharge the duties of such office; which certificate shall be made within ten days after such qualification. [66 v. 171, § 132.]

Clerk of court shall record, etc.

SEC. 17. The clerk of the court of common pleas shall record the certificates mentioned in the last section, in the book in which the record of the election and qualification of justices of the peace are kept; and the same fees shall be allowed to the officers certifying and recording the same as are allowed for certifying and recording the election and qualification of justices of the peace. [66 v. 171, § 133.]

Penalty for neglect.

SEC. 18. Every clerk whose duty it shall be to make such certificate, or record the same when presented for record, who neglects or refuses to perform the duties enjoined by this chapter, shall pay to the treasurer of the corporation, for every such neglect or refusal, the sum of fifteen dollars, to be recovered in a civil action, at the suit of such corporation; and shall also be liable for all damages arising from such neglect or refusal; and any corporation clerk who neglects to make report as provided in section fifteen of this chapter, shall forfeit one hundred dollars, to be recovered in

a civil action, with costs, in the name of the corporation, and for its use. [66 v. 172, § 134; 67 v. 71, § 131.]

When clerk shall perform duties of auditor, etc.

SEC. 19. In corporations in which there is no city auditor, the clerk shall perform the duties of auditor, under the direction of the council, and such other duties pertaining to his office as may be prescribed by the council; and he shall have the charge and custody of the laws and ordinances, and the books, records, and papers of the corporation, and shall carefully keep and preserve them in his office, and shall certify all transcripts that may be required of any record or paper in his office, and shall be entitled to receive therefor the same fees as other officers for similar services. [66 v. 172, § 135.]

Shall deliver books, etc., to city auditor.

SEC. 20. Upon the creation of the office of city auditor, the clerk shall, upon demand, deliver to the incumbent of such office, when duly qualified, all the records, books, papers, vouchers, and documents in his possession pertaining to the duties of such auditor. [66 v. 172, § 136.]

Corporation seal.

SEC. 21. The council shall cause to be provided for the clerk's office a seal, in the center of which shall be the name of the corporation, and around the margin the words, "City Clerk," or in case of a village, the words, "Corporation Clerk;" which seal shall be affixed to all transcripts, orders, certificates, or other papers which it may be necessary or proper to authenticate. [66 v. 172, § 137.]

THE AUDITOR.

Powers and duties of auditor.

SEC. 22. The auditor shall have power to administer oaths and take affidavits, and such other powers, and shall perform such duties as may be prescribed by law, including those imposed by sections thirteen, fourteen, and fifteen of this chapter, or by any ordinance of the corporation not inconsistent with the constitution and laws of this state, and not incompatible with the nature of his office. [66 v. 172, § 138.]

Have charge of books, etc.

SEC. 23. He shall have charge of all books, records, and papers connected with his office, and shall carefully keep and preserve the same in his office, and the same shall be subject to the inspection of all persons interested. [66 v. 172, § 139.]

THE TREASURER.

Powers and duties of treasurer.

SEC. 24. The treasurer shall keep an accurate account of all moneys by him received, showing the amount thereof, the time when, from whom, and on what account received; also of all disbursements by him made, showing the amount thereof, the time when, to whom, and on what account paid; and he shall so arrange his books that the amount received and paid on account of separate funds, or specific appropriations, shall be exhibited in separate accounts; and in addi-

tion to the ordinary duties of such officer, he shall have such powers and perform such duties as are prescribed in this title, or as may be required by ordinance of the corporation not inconsistent with this title, and not incompatible with the nature of his office. [66 v. 174, § 151.]

Further duties of treasurer.

SEC 25 He shall demand and receive from the county treasurer all taxes levied and assessments made and certified to the county auditor by authority of the council, and by the auditor placed on the tax list for collection, and from all persons authorized to collect or required to pay the same; all moneys accruing to the corporation from judgments, fines, penalties, forfeitures, licenses, and costs taxed in the mayor's and police courts, and debts due the corporation; and he shall disburse the same on the order of such person or persons as may be authorized by law or ordinance to issue orders therefor. [66 v. 174, § 152.]

Quarterly account.

SEC. 26. He shall settle and account with the council quarterly, and also whenever the council may by resolution or ordinance require; and he shall report annually to the council, at the first regular meeting thereof in April, the condition of the finances of the corporation and the amount received by him, and the sources whence received, and the disbursements by him made, and on what account, during the year preceding the first day of April; and such account shall exhibit the balance due on each fund which may have come into his hands during the year. [66 v. 174, § 153.]

Compensation.

SEC. 27. He shall be allowed, as compensation for the disbursement of moneys, other than school funds, which shall come into his hands under the provisions of this title, such sum as the council may allow, not exceeding the following in any year:

On the first five thousand dollars two per centum;

On the next five thousand dollars one and a half per centum;

On the next ten thousand dollars one-half of one per centum;

And on all sums that may be disbursed by him in excess of the above amounts, one-fifth of one per centum; which compensation shall be paid out of any money in the corporation treasury not otherwise appropriated; and no other compensation shall be allowed corporation treasurers for services performed under this title. [66 v. 174, § 154.]

Duty of county treasurer.

SEC. 28. The county treasurer shall, on the first Monday of February and August in each year, pay over to the treasurer of the corporation all moneys received by him up to that date arising from taxes levied and assessments made belonging to the corporation. [66 v. 175, § 155.]

Where village funds may be deposited.

SEC. 29. The moneys of a village shall be kept in the burglar-proof safe belonging to such village, if such there be: provided, however, that in any village the treasurer or person intrusted with funds of the same may, with consent of

the council of such village, and bondsmen of such village treasurer, deposit such funds in a bank or other safe place, subject to the order of the treasurer or person making the deposit, subject to such terms and conditions as to collateral security from such bank or person receiving such deposit as council shall, by resolution, direct; but the failure or inability on the part of any individual, corporation, or firm, with whom the funds of any village may be deposited, to refund the same, shall not release the treasurer or other person who shall be bound for the money so deposited belonging to such village. [64 v. 65, §§ 1, 2; S. & S. 904.]

Duty of outgoing treasurer as to delivering money, etc., to successor.

SEC. 30. The corporation treasurer, and the county treasurer, when acting as such, shall each, at the expiration of his term of office, or on his resignation or removal, deliver to his successor, all moneys, books, papers, and other property in his possession as treasurer; and in the case of the death or incapacity of such treasurer, his legal representatives shall, in like manner, pay over and deliver the money and property which was so in the treasurer's hands, to the person entitled thereto. [55 v. 92, § 22; S. & C. 1596.]

THE SOLICITOR.

Duties of solicitor.

SEC. 31. The solicitor shall, whenever required so to do by resolution of the council, prosecute or defend, as the case may be, for and in behalf of the corporation, all complaints, suits, and controversies in which the corporation is a party, except cases before the police court where there is a prosecuting attorney for such court, and such other suits, matters, and controversies as he shall, by resolution or ordinance, be directed to prosecute; but he shall not be required to prosecute any action before the mayor for the violation of any ordinance without first advising such action. [66 v. 175, § 157.]

Shall give opinion.

SEC. 32. When any officer of the corporation entertains doubts concerning the law in any matter before him in his official capacity, and desires the opinion of the solicitor, he shall clearly state to the solicitor, in writing, the question upon which the opinion is desired, and thereupon it shall be the duty of the solicitor, within a reasonable time, to reply, orally or in writing, to every such inquiry; and the right here conferred upon officers shall extend to the council, and to each board provided for in this title.

Pay over money.

SEC. 33. He shall pay over to the treasurer all moneys which may come into his hands belonging to the corporation, or which may come into his hands by way of fines, forfeitures, costs, or otherwise, and take the treasurer's duplicate receipt therefor, one of which he shall file with the clerk of the corporation, or in case there be an auditor, then with such auditor. [66 v. 175, § 158.]

Shall apply for injunction in certain cases.

SEC. 34. He shall apply to a court of competent jurisdiction for an order or injunction to restrain the misapplication of funds of the corporation, or the abuse of its corporate powers, or the execution or performance of any contract made

in behalf of the corporation in contravention of the laws or ordinances governing the same, or which was procured by fraud or corruption. [66 v. 175, § 159]

When tax payer may institute suit.

SEC. 35. In case he fail, upon the request of any tax payer of the corporation, to make the application provided for in the preceding section, it shall be lawful for such tax payer to institute suit for such purpose, in his own name, on behalf of the corporation: provided that no such suit or proceeding shall be entertained by any court until such request shall have first been made in writing. [67 v. 72 § 160]

Duty of the court.

SEC. 36. If the court hearing such case is satisfied that such tax payer had good cause to believe that his allegations were well founded, or if the same is sufficient in law, it shall make such order as the equity and justice of the case demands; and in such case the tax payer shall be allowed his costs, including a reasonable compensation to his attorney. [66 v. 175, § 161.]

Annual report.

SEC. 37. He shall make a report annually to the council, at their first regular meeting in April, of the business of his office, and the moneys by him collected, during the year preceding the first day of April, and such other matters as he may deem proper, in order to promote the good government and welfare of the corporation. [66 v. 175, § 162]

His salary.

SEC. 38. He shall receive such stated salary, payable quarterly out of the corporation treasury, and such fees or compensation for particular services, as the council may prescribe; and no additional counsel shall be appointed or employed at the expense of the corporation, except by a resolution of the council adopted for that purpose, specifying the case in which such additional attorney is employed, the reasons therefor, and may fix the compensation to be paid. [66 v. 176, § 163.]

STREET COMMISSIONER, FIRE ENGINEER, CIVIL ENGINEER, AND SUPERINTENDENT OF MARKETS.

Duties of various officers, and their compensation.

SEC. 39. In municipal corporations that have a street commissioner, fire engineer, civil engineer, or superintendent of markets, those officers shall severally perform the duties prescribed by this title, and such other duties not incompatible with the nature of their office, as the council may by ordinance require; and each shall receive such compensation for his services, by fees or salary, or both, as may be provided by ordinance. [66 v. 176, §§ 164, 165.]

FIFTH DIVISION: POLICE DEPARTMENT.

CHAPTER 1. POLICE COURT.
CHAPTER 2. POLICE POWERS OF MAYOR, POLICE JUSTICE, PRESIDENT OF THE BOARD OF TRUSTEES OF A HAMLET, AND A JUSTICE OF THE PEACE IN A HAMLET.
CHAPTER 3. MARSHAL AND CHIEF OF POLICE.
CHAPTER 4. LIMITATIONS ON FINE AND IMPRISONMENT; CIVIL ACTION FOR FINE; LIMITATION IN TIME OF PROSECUTION.
CHAPTER 5. POLICE BOARDS AND OFFICERS.
CHAPTER 6. REFORMATORY INSTITUTIONS AND PRISONS.
CHAPTER 7. VAGRANTS AND DISSOLUTE PERSONS.

CHAPTER 1.

POLICE COURT.

SUBDIVISION I. *Jurisdiction of the Court and Judge.*
SUBDIVISION II. *Clerk.*
SUBDIVISION III. *Prosecuting Attorney.*

SUBDIVISION I.

SECTION
1. Name; presiding officer.
2. Seal.
3. General jurisdiction to inquire into crimes, etc.
4. Final jurisdiction in misdemeanors, etc.
5. Hearing in felonies; when charge may be reduced in grade.
6. Where on charge of misdemeanor proof shows felony.
7. General powers.
8. In what name prosecutions carried on.
9. As to the terms of court.
10. Mode of prosecuting.
11. Rules.
12. As to dispatch of business.
13. Salary of judge.
14. Provisions as to witnesses, jurors, etc.
15. Witnesses' fees.
16. Other fees.
17. Recognizances.
18. Substitute for judge.
19. His compensation; judicial notice of appointment.

SUBDIVISION II.

20. Powers of clerk.
21. Duties as to papers.
22. Journal; record.
23. Report; payment into treasury.
24. Salary.
25. Deputy.
26. Inability of clerk; substitute.
27. Clerk and deputy not to practice.
28. Surplus after paying expenses.

SUBDIVISION III.

29. General duties of prosecuting attorney.
30. Salary.
31. Inability; substitute.

SUBDIVISION I. JURISDICTION OF THE COURT AND JUDGE.

Name; presiding officer.

SECTION 1. In cities of the first class there shall be a court, held by the police judge, which court shall be styled the police court, and be a court of record. [72 v. 51, § 168.]

Seal.

SEC. 2. Said court shall have a seal, with the name of the state in the center, and the style of the court in the margin; and it shall be the duty of council to furnish such seal. [72 v. 51, § 168.]

General jurisdiction to inquire into crimes, etc.

SEC. 3. The jurisdiction of said court to make inquiry in criminal cases shall be the same as that of a justice of the peace; and the judge shall have the same power to take acknowledgment of deeds, and other instruments of writing, administer oaths, and take and certify depositions. [66 v. 176, § 166]

Final jurisdiction.

SEC. 4. The court shall have jurisdiction of any offense under any ordinance of the city, and of any misdemeanor committed within the limits of the city, or within four miles thereof, to hear and finally determine the same, and impose the prescribed penalty; but cases in which the accused is entitled to a trial by jury, shall be so tried, unless a jury be waived. [66 v. 176, § 167.]

Hearing in felonies.

SEC. 5. In felonies committed within the county, the court shall have the powers of a justice of the peace to hear the case, and discharge, recognize, or commit; and if, upon such hearing, the court is of the opinion that the offense is only a misdemeanor, and that the court may entertain jurisdiction of it under the last section, a plea of guilty of such misdemeanor may be received, and sentence and judgment pronounced; but if in such case the accused decline to enter such plea, the court, without discharging the accused, shall cause the prosecuting attorney to immediately file in the court an information against the accused for such misdemeanor, on which charge he shall be tried in that court, after an entry has been made discharging him of the felony.

Where, on charge of misdemeanor, proof shows felony.

SEC. 6. Where the charge is the commission of a misdemeanor, and the proof shows that the party has committed a felony, the court, upon the proper affidavit being filed, shall discharge the party as to the misdemeanor, and admit him to bail or commit him, as the case may be, for the felony.

General powers.

SEC. 7. The court shall have power to issue process, preserve order, and punish contempts, summon and impannel jurors, grant new trials and motions in arrest of judgment, suspend execution of sentence upon notice of intention to apply for leave to file a petition in error, and such other powers incident to the court of common pleas as may be necessary for the exercise of the jurisdiction herein conferred, and the enforcement of the judgments and orders of the court. [72 v. 51, § 168.]

SEC. 8. Prosecutions for offenses against the laws of the state shall be brought and conducted in the name of the

In what name prosecutions carried on.

state, and prosecutions for violations of city ordinances shall be brought and conducted in the name of the corporation; and in any case a new trial may be granted within the same time and for the same cause as in like cases in the court of common pleas. [66 v. 177, § 196.]

Terms of the court.

SEC. 9. The police court shall always be open for the transaction of business, but may adjourn from day to day, or from time to time, and shall be considered as holding monthly terms, each commencing on the first Monday of the month. [72 v. 51, § 171.]

Mode of prosecuting, etc.

SEC. 10. The mode in which business shall be brought before the court shall be fixed by ordinance of the city council or rule of court. [72 v 51 § 171]

Rules.

SEC. 11. The judge shall adopt such rules of practice and procedure as will give each party a proper statement of any charge against him, and a full opportunity of being heard, which rules shall be placed in the court room. [66 v. 177, § 173.]

As to dispatch of business.

SEC. 12. The business of the court shall be dispatched with all the speed consistent with a full, fair trial, or hearing of the cases. [66 v. 177, § 173]

Salary of judge.

SEC. 13. The judge of the police court shall receive no fees or perquisites, but shall receive such annual compensation, not exceeding two thousand dollars, as the council may prescribe, payable quarterly out of the city treasury, and such further compensation, payable out of the county treasury, as the commissioners of the county may deem proper; but in cities of the first grade of the first class such judge shall receive not less than fifteen hundred dollars a year from the city treasury, and not less than fifteen hundred dollars a year from the county treasury; and nothing in this section shall prohibit any police judge from receiving the fees for taking the acknowledgment of instruments, depositions, and affidavits which are allowed to justices of the peace for like services. [66 v. 177, § 170]

Provisions as to jurors, witnesses, etc.

SEC. 14. The court shall have power to compel the attendance of witnesses, jurors, and parties; jurors shall have the qualifications and be subject to the challenges of those in the court of common pleas in like cases; they shall be selected, summoned, and impanneled in accordance with an ordinance of the council, or if no such ordinance is in force, in accordance with a rule of the court; and they shall receive the same fees as are allowed jurors in the court of common pleas in such cases, which shall be payable out of the county treasury in state cases, and out of the city treasury in cases for the violation of ordinances [66 v. 177, § 172]

Witnesses' fees.

SEC. 15. Witnesses in the police court shall be allowed the same fees in cases arising from a violation of the ordinances, as are allowed in like cases before justices of the peace, which shall be paid in the same manner; and in state cases the same fees as in like cases in the court of common

pleas, which shall be paid in the same manner. [66 v. 178, § 178.]

Other fees.

SEC. 16. Other fees in the police court shall be the same in state cases as are allowed in the probate court, or before justices of the peace, in like cases; and in cases for violation of ordinances such fees as the council shall, by ordinance, prescribe, not exceeding the fees for like services in state cases. [66 v. 178, § 177.]

Recognizances.

SEC. 17. In felonies, the court shall recognize such of the witnesses as will probably be required in the court of common pleas to appear in that court; one instrument, in which, under the penalty named, the witnesses shall severally undertake to appear before the court of common pleas of the county forthwith, or at the next term, as the case may be, shall be sufficient; all recognizances, whether of the accused or the witnesses, shall, when taken, be certified and entered on the journal, and forthwith delivered to the clerk of the court of common pleas; and neither coverture, nor minority, shall be a defense to any recognizance. [66 v. 178, § 176.]

Substitute for judge.

SEC. 18. During the absence, inability, or disability of the judge, the mayor may hold the court, or may select for the purpose a reputable member of the bar, or a justice of the peace, residing within the city, who shall have the jurisdiction and powers conferred upon judges of police courts, be styled "acting police judge," and, as such, sign all process and records during the time he shall serve, and perform all other acts pertaining to the office; and in case the mayor hold the court, he shall have all the powers and perform all the duties of the judge. [70 v. 248, § 174; 66 v. 170, § 124.]

His compensation, etc.

SEC. 19. The person selected as judge shall be paid for the time occupied, in the same manner, and at the same rate, as the police judge, and the amount so paid shall be deducted from the compensation of the police judge; and all courts shall take judicial notice of the selection and powers of such person. [70 v. 248, § 174; 66 v. 170, § 124.]

SUBDIVISION II. CLERK.

Powers.

SEC. 20. The clerk of the police court shall have power to administer oaths; to admit to bail, for a period not exceeding twenty-four hours, any person accused of a misdemeanor, or violation of an ordinance, for his appearance before the police court or mayor, as the case may be; to appoint one or more deputies, to be approved by the council; and to perform all other things which may be performed by the clerk of the court of common pleas in like cases. [67 v. 72, § 185; 66 v. 178, § 182.]

Duties as to papers.

SEC. 21. He shall file and preserve all informations, process, motions, and papers of every description used in the court, except such as he may be required to transmit to another court. [66 v. 179, § 187.]

Journal.

SEC. 22. He shall keep a journal of all orders and judgments of the court, and on the opening of the court on any day, the minutes of the preceding day shall be read, and signed by the judge, the errors, if any, being first corrected; and the entries on the journal in any case, in connection with the information and other papers, shall constitute, and have the force of, a final record. [66 v. 179, § 187.]

Record.

Report.

SEC. 23. He shall, on the first Monday of every month, make, under oath, to the city auditor, a report of all fines, penalties, fees, and costs imposed by the court in city cases, showing in what cases the same have been paid, and in what cases they remain unpaid; and also, at the same time, he shall make a like report to the county auditor as to state cases; and he shall immediately pay into the city and county treasuries, respectively, the amount then collected, or which may have come into his hands, from all sources, during the preceding month. [66 v. 179, § 189.]

Bond.

SEC. 24. He shall give such bonds, with sureties, as may be required by the council and county commissioners; and

Salary.

shall receive for his services in city cases a fixed salary, to be prescribed by ordinance of the council, and for state cases such further allowance as the county commissioners may deem proper, but not exceeding eight hundred dollars per year. [66 v. 178, §§ 183, 184.]

Deputy.

SEC. 25. A deputy clerk of the police court may perform any duty of the principal; he shall receive such compensation as the council shall prescribe, but not exceeding fifteen hundred dollars per year; and the principal may take from him an undertaking, with sureties, for the faithful performance of such official duties. [67 v. 72, § 185.]

Inability of clerk.

SEC. 26. When there is temporary inability of the clerk, and no deputy has been appointed, the judge may appoint some competent person, who, upon giving the bond and taking the oath prescribed, shall have the powers and perform the duties of the clerk; and the person so appointed

Substitute.

shall be paid out of the city treasury, on the order of the council, at the same rate the clerk is paid for similar services; but such appointment shall be valid only until the inability be removed. [66 v. 179, § 186.]

Clerk and deputy not to practice in certain cases.

SEC. 27. Neither the clerk nor his deputy shall be concerned as counsel or agent in the prosecution or defense of any case that is or has been before the court. [66 v. 179, § 188.]

Surplus fees after paying expenses.

SEC. 28. If there be any surplus of the fees collected for the city, after payment of the expenses of the police court required to be paid by the city, such surplus shall, except as otherwise provided by law (69 v. 165), be appropriated by council for the benefit of the common schools of the city. [66 v. 179, § 190.]

SUBDIVISION III. PROSECUTING ATTORNEY.

General duties.

SEC. 29. The prosecuting attorney of the police court shall prosecute all cases brought before said court, and perform the same duties, as far as the same are applicable to the police court, as the prosecuting attorney of a county. [66 v. 179, § 191.]

Salary.

SEC. 30. He shall receive for his services in city cases, such salary as the council prescribe, which shall be paid out of the city treasury; and the county commissioners shall allow him such further compensation as they may deem proper, not exceeding eight hundred dollars per annum, which shall be paid out of the county treasury. [66 v. 179, § 192.]

Inability; substitute.

SEC. 31. When there is temporary inability or absence of such prosecuting attorney, the judge shall appoint some competent member of the bar to perform the duties until the removal of the inability, or return of such prosecuting attorney; and the person so appointed shall be paid for the time occupied, in the same manner, and at the same rate, as such prosecuting attorney; which amount may, at the discretion of the judge, be deducted from the salary of such prosecuting attorney. [66 v. 179, § 193.]

CHAPTER 2.

POLICE POWER OF MAYOR, POLICE JUSTICE, PRESIDENT OF THE BOARD OF TRUSTEES OF A HAMLET, AND A JUSTICE OF THE PEACE IN A HAMLET.

SUBDIVISION I. *In cities except of the first class.*

SUBDIVISION II. *In villages.*

SUBDIVISION III. *In hamlets.*

SUBDIVISION IV. *Further provisions concerning the powers of the mayor and other officers in matters of a criminal or police nature.*

SUBDIVISION I.

SECTION
1. Final jurisdiction in city cases.
2. Final jurisdiction in certain state cases.
3. Jurisdiction where jury is waived.
4. Certain city cases must be tried by jury.
5. Certain state cases may be tried by jury.
6. In certain state cases accused may be recognized.
7. Jurisdiction in felonies.

SUBDIVISION II.

SECTION
8. Final jurisdiction under ordinances.
9. Jurisdiction in certain state offenses.
10. Jurisdiction where jury is waived.
11. When violation of ordinance tried by jury.
12. When he may recognize, etc., for violation of ordinance.
13. When misdemeanors may be tried by jury.
14. When he may recognize in such cases.
15. Jurisdiction in felonies, etc.
16. Police justice.
17. Manner of signing process; his seal, powers, etc.

SUBDIVISION III.

18. Powers of president of board or justice of the peace.
19. When he may finally determine case.
20. When he must recognize, etc.
21. Disposition of fines.

SUBDIVISION IV.

22. Further as to the powers of mayors in criminal matters.
23. Proclamation as to sale of liquors on election days.
24. Ordinance as to juries; qualification of jurors, etc.
25. Talesman.
26. Penalties, etc., of jurors; fees of jurors and witnesses.
27. Fees, how paid to witnesses and jurors.
28. Fees of officers.
29. Contempts; rules.
30. Supervision of prisons, etc.
31. When offender may be confined until fine and costs paid.

SUBDIVISION I. IN CITIES EXCEPT OF THE FIRST CLASS.

Final jurisdiction in city cases.

SECTION 1. In cities, other than those which have a police court, the mayor shall have final jurisdiction to hear and determine any prosecution for the violation of an ordinance of the corporation, unless imprisonment is prescribed as part of the punishment. [66 v. 169, § 114; 69 v. 192, § 117.]

Final jurisdiction of certain state cases.

SEC. 2. He shall have final jurisdiction to hear and determine any prosecution for a misdemeanor, unless the accused is, by the constitution, entitled to a trial by jury; and his jurisdiction in such cases shall be co-extensive with the county. [66 v. 169, § 114; 69 v. 192, § 117.]

Jurisdiction where jury is waived.

SEC. 3. He shall have such jurisdiction in the cases mentioned in the last two sections, notwithstanding the right to a jury, if before the commencement of the trial, the accused waive a jury trial. [66 v. 169, § 114; 69 v. 192, § 117.]

Certain city cases must be tried by jury.

SEC. 4. If the charge is the violation of an ordinance in a matter with respect to which imprisonment may be a part of the punishment, and the accused does not waive a jury, the mayor shall, nevertheless, impanel a jury, and try the case on the affidavit, in the same manner, and with like effect, as misdemeanors are tried in the court of common pleas on indictment. [66 v. 169, § 114; 69 v. 192, § 117.]

Certain state cases may be tried by jury.

SEC. 5. If the charge is the commission of a misdemeanor, prosecuted in the name of the state, and the accused, being entitled to a jury, does not waive the right, the mayor may,

nevertheless, impanel a jury, and try the case on the affidavit, in the same manner, and with like effect, as such cases are tried in the court of common pleas on indictment. [66 v. 169, § 114; 69 v. 192, § 117.]

In certain state cases accused may be recognized, etc.

SEC. 6. The mayor may, however, decline to have such state case tried before him by a jury, if in his opinion the public interest will thereby be promoted, and, having entered that fact on his minutes, inquire into the complaint, discharge the accused, or recognize him to the court of common pleas or probate court, as the case may be, or commit him in default of bail. [66 v. 169, § 114; 69 v. 192, § 117.]

Jurisdiction in felonies, etc.

SEC. 7. In felonies, and other criminal proceedings not herein provided for, such mayor shall have jurisdiction and power, throughout the county, concurrent with justices of the peace. [66 v. 169, § 114; 69 v. 192, § 117.]

SUBDIVISION II. IN VILLAGES.

Final jurisdiction under ordinances.

SEC. 8. In villages, the mayor shall have final jurisdiction to hear and determine any prosecution for the violation of an ordinance of the corporation, unless imprisonment is prescribed as part of the punishment. [66 v. 169, § 114; 69 v. 192, § 117.]

Jurisdiction in certain state offenses.

SEC. 9. He shall have final jurisdiction to hear and determine any prosecution for a misdemeanor, unless the accused is by the constitution entitled to a trial by jury; and his jurisdiction in such cases shall be co-extensive with the county. [66 v. 169, § 114; 69 v. 192, § 117.]

Jurisdiction when jury is waived.

SEC. 10. He shall have the jurisdiction in the cases mentioned in the last two sections, notwithstanding the right to a jury, if before the commencement of the trial, a waiver in writing, subscribed by the accused, is filed in the case. [66 v. 169, § 114; 69 v. 192, § 117.]

When violation of ordinance tried by jury.

SEC. 11. He may summon a jury, and try the accused, in any prosecution for the violation of an ordinance, where imprisonment is a part of the prescribed punishment, and the accused does not waive a jury; and in such case, judgment shall be rendered in accordance with the verdict, unless a new trial, for sufficient cause, is granted. [66 v. 169, § 114; 69 v. 192, § 117.]

When he may recognize, etc., for violation of ordinance.

SEC. 12. He may decline to permit the trial, mentioned in the last section, if in his opinion the public interest will be thereby promoted, and having entered that fact on his docket, proceed to inquire into the complaint, and discharge the accused, recognize him to the court of common pleas, or commit him in default of bail; and in such case the court of common pleas shall have jurisdiction of the offense. [66 § 169, § 114; 69 v. 192, § 117.]

When he may finally hear and determine.

SEC. 13. In misdemeanors, prosecuted in the name of the state, he may summon a jury, and try the case, notwithstanding the accused has the right to a jury which he has not waived, if a request for such trial, subscribed by the ac-

cused, is filed in the case before the commencement of the trial; and in such case the trial shall be had on the affidavit, in the same manner and with like effect as a trial is had on an indictment for such offense in the court of common pleas. [66 v. 169, § 114; 69 v. 192, § 117.]

When he may recognize in such cases.

SEC. 14. If in the opinion of the mayor the public interest will thereby be promoted, he may decline to permit such trial, and having entered that fact on his docket, proceed to inquire into the complaint, and discharge the accused, recognize him to the court of common pleas or probate court, as the case may be, or commit him in default of bail. [66 v. 169, § 114; 69 v. 192, § 117.]

Jurisdiction in felonies, etc.

SEC. 15. In felonies, and other criminal proceedings not herein provided for, such mayor shall have jurisdiction and power throughout the county, concurrent with justices of the peace. [66 v. 169, § 114; 69 v. 192, § 117.]

Police justice.

SEC. 16. In villages the council may, upon the recommendation of the mayor, by a vote of all the members elected, appoint some justice of the peace, resident of the corporation, police justice, who shall, during the term of office of such mayor, in his absence, or by reason of his inability, or disability to hold court, have jurisdiction of all prosecutions for violations of ordinances of the corporation, with full power to hear and determine the same, and shall have the same powers, perform the same duties, and be subject to the same responsibilities, in all such cases as are prescribed in the preceding sections, to be performed by and are conferred on the mayors of such corporations. [69 v. 192, § 117.]

Manner he shall sign process; his seal, powers, etc.

SEC. 17. Such justice of the peace so appointed shall be styled "Police justice," in which style he shall sign all process and records during the time he shall serve; he shall have a seal, to be provided by the council, with the name of the state in the center, and the words "Police justice of the village of———," around the margin; and all the provisions of this chapter applicable to the mayor of a village shall apply to such police justice. [69 v. 192, § 117.]

SUBDIVISION III. IN HAMLETS.

Power of president of board and justice of the peace.

SEC. 18. A justice of the peace of a township in which a hamlet, or any part of it, may be situated, or the president of the board of trustees of such hamlet, shall have jurisdiction in any prosecution for the violation of any ordinance of such corporation, to hear and finally determine the same, and impose the prescribed punishment, unless imprisonment is a part of the prescribed punishment. [73 v. 170, § 56.]

When he may finally hear and determine.

SEC. 19. If imprisonment is part of the prescribed punishment for such offense, the justice or president shall have jurisdiction to hear and determine the case, and inflict the prescribed punishment, if the accused before the com-

mencement of the trial, subscribes and files in the case a waiver of a jury. [73 v. 170, § 56.]

When he shall recognize, etc.

SEC. 20. If in the cases mentioned in the last section, the accused does not subscribe such waiver, the justice or president shall inquire into the complaint, and discharge the accused, or recognize him to appear before the court of common pleas, or commit him in default of bail, and in such case the court of common pleas shall have jurisdiction of the offense, and shall direct the prosecuting attorney to file an information against the accused, on which he shall be tried. [73 v. 170, § 56.]

Disposition of fines.

SEC. 21. Fines collected by any officer for the violation of an ordinance of a hamlet, shall be by him paid over to the clerk of the corporation, to be applied to corporation purposes. [73 v. 170, § 56.]

SUBDIVISION IV. FURTHER PROVISIONS CONCERNING THE POWERS OF THE MAYOR AND OTHER OFFICERS, IN CITIES AND VILLAGES, IN MATTERS OF A CRIMINAL OR POLICE NATURE.

Further as to powers of mayors in cities and villages in criminal matters.

SEC. 22. The mayor shall have, within the corporate limits, all the powers conferred upon sheriffs to suppress disorder and keep the peace; and he shall award and issue all writs and process that may be necessary to enforce the administration of justice throughout the corporation, and for the lawful exercise of his jurisdiction, according to the usages and principles of law; he shall subscribe his name and affix his official seal to all writs, process, transcripts, and other official papers; and, in cities having no police judge, in the absence or during the disability of the mayor, he may designate a justice of the peace to perform his duties in criminal matters, which justice shall, during the time, have the same power and authority as the mayor. [66 v. 169, § 118.]

Proclamation as to sale of liquors on election day.

SEC. 23. The mayor shall, three days previous to and on the day of any election, issue a proclamation to the public, setting forth therein the substance of the enactments to prohibit the sale of intoxicating liquors on that day; and it shall be the duty of the mayor to take proper measures for the enforcement of such enactments. [61 v. 24, § 1; S. & S. 344.]

Ordinances as to juries.

SEC. 24. The council of any city or village shall have power to prescribe by ordinance for summoning and impaneling juries under this division; and the jurors so summoned shall have the qualifications of jurors in the court of common pleas, and may be impaneled to try any case which, by the constitution, or the provisions of this division, is triable by jury. [66 v. 180, § 194.]

Qualifications of jurors, etc.

Talesmen.

SEC. 25. When any juror so summoned, upon challenge or inquiry, is found incompetent, he may be dismissed, and a talesman called by the marshal, or other officer attending the trial, and the panel shall be filled in the same manner

as panels are filled in the court of common pleas. [66 v. 180, § 195.]

Penalties, etc., of jurors.

SEC. 26. Jurors so summoned shall perform like duties, and be subject to like rules and penalties, as jurors before justices of the peace; and witnesses and jurors shall, except as herein otherwise provided, receive the same compensation as witnesses before justices of the peace. [66 v. 180, § 196.]

Fees of jurors and witnesses.

How fees paid.

SEC. 27. In cases for the violations of ordinances, the fees of witnesses and jurors shall be paid, on the certificate of the officer presiding at the trial, out of the corporation treasury, and in state cases on like certificate out of the county treasury. [66 v. 180, § 196.]

Fees of officers.

SEC. 28. The costs of the mayor and other officers, in all cases, shall be fixed by ordinance, but in no case greater than the fees for similar services before justices of the peace; and in case of conviction the fees of officers, jurors, and witnesses shall be taxed against the parties convicted; and in case of acquittal of the violation of an ordinance, the costs, except the fees of the mayor and marshal, shall be taxed against the corporation. [66 v. 180, § 197.]

Contempts.

Rules.

SEC. 29. The officer presiding at any such trial shall have like power to punish contempts, and compel the attendance of jurors and witnesses, and to establish rules for the examination and trial of all cases brought before him, as is or may be conferred on justices of the peace. [66 v. 180, § 198.]

Supervision of prison, etc.

SEC. 30. The mayor, and in his absence, the president of the council, shall have power to grant to magistrates of adjoining or contiguous townships the temporary use of the corporation prison, station, or watch-houses, to confine criminals, or other persons dangerous to the peace of the community, until they can be safely removed therefrom to the county jail, or other place of security. [66 v. 170, § 120.]

When offender may be confined until fine and costs paid.

SEC. 31. When a fine is the whole or part of a sentence, the court, mayor, or president of the board of trustees, may order that the person sentenced shall remain confined in the county jail, work-house, or prison, until the fine and costs be paid, or secured to be paid, or the offender be otherwise legally discharged. [66 v. 314, § 180; 60 v. 66, § 1, S. & S. 610.]

CHAPTER 8.

MARSHAL AND CHIEF OF POLICE.

SUBDIVISION I. *The Marshal.*

SUBDIVISION II. *Chief of Police.*

SUBDIVISION I.

SECTION
1. Marshal and his deputies.
2. Duties of marshal.
3. To suppress riots, etc.
4. Powers, liabilities, and fees.
5. Disposition of fines.
6. Disposition and record of stolen property.
7. To be held subject to order of mayor.
8. Report to mayor in regard to stolen property.

SUBDIVISION II.

9. Chief of police.
10. His duties.
11. Powers same as marshal.
12. Compensation.
13. To receive no perquisites.
14. Disposition of fines.

SUBDIVISION I. THE MARSHAL.

The marshal —his deputies.

SECTION 1. The marshal shall be the principal ministerial officer of the corporation. The council may appoint one or more deputies, removable for cause at the pleasure of council, and may require suitable bond from such deputies; and said deputies may execute all writs, process, and orders directed to the marshal. [66 v. 172, § 140.]

Duties of marshal.

SEC. 2. He shall execute and return all writs and process to him directed by the mayor, and shall, by himself or deputy, attend on the sittings of said court, to execute the orders and process thereof, and to preserve order therein; and his jurisdiction, and that of his deputies, in the execution of all such writs and process, and in criminal cases, and in all cases of a violation of the ordinances of the corporation, shall be co-extensive with the county, and in civil cases shall be co-extensive with the jurisdiction of the mayor in the same. [71 v. 76, § 141.]

To suppress riots, etc.

SEC. 3. He shall suppress all riots, disturbances, and breaches of the peace, and to that end may call upon the citizens to aid him; he shall arrest all disorderly persons in the corporation, and pursue and arrest any person fleeing from justice in any part of the state; he shall arrest any person in the act of committing any offense against the laws of the state, or the ordinances of the corporation, and forthwith bring such person before the mayor, or other competent authority, for examination or trial; and he shall receive and execute any proper authority for the arrest and detention of criminals fleeing or escaping from other places or states. [66 v. 173, § 142.]

SEC. 4. He shall have, in the discharge of his proper duties, like powers, be subject to like responsibilities, and shall

Powers, responsibilities, fees, etc.

receive the same fees as sheriffs and constables in similar cases, for services actually performed by himself or his deputies, and such additional compensation as the council may prescribe; but in no case shall he receive any fees or compensation for services rendered by any watchman or other officer, nor shall he receive for guarding, safe keeping, or conducting into the mayor's or police court, any person arrested by himself or deputies, or by any other officer, a greater compensation than twenty cents. [66 v. 173, § 143.]

Disposition of fines, etc.

SEC. 5. All fees, costs, fines, and penalties by him collected, shall immediately be paid over to the mayor, and he shall report to the council monthly the amount thereof, and from whence and for what purpose collected, and when paid over. [66 v. 173, § 144.]

Disposition and record of stolen property.

SEC. 6. All stolen or other property taken by the members of the police force, in cities of the second class, shall be delivered to the marshal, or officer performing like duties, who shall, in a book to be kept for that purpose, keep a record of the same, together with the name of the person from whom taken, the probable value of the article, and such other information as may seem to him necessary. [74 v. 75, § 1.]

To be held subject to order of mayor.

SEC. 7. Such officer shall permit all persons to examine such record at their pleasure; he shall hold all such goods or property subject to the order of the mayor, and dispose of the same as the mayor may direct; and when any such goods or property are sold by him, he shall forthwith pay all sums arising from such sale into the city treasury. [74 v. 75, § 1.]

Report to mayor in regard to stolen property.

SEC. 8. Such officer shall, every thirty days, deliver to the mayor of his city a statement, in writing, of all articles of goods or property which have come into his hands by virtue of his office, which shall show what disposition has been made of the same; which statement must be sworn to by such officer, who is hereby made responsible to the mayor for all such articles, or their true value. [74 v. 75, § 2.]

SUBDIVISION II. CHIEF OF POLICE.

Chief of police.

SEC. 9. In all corporations in which there is no marshal, and which are not otherwise provided for in this division, the duties imposed on that officer shall be performed by the chief of police. [66 v. 173, § 145.]

His duties.

SEC. 10. He shall be under the direction of the mayor, and shall execute all process to him directed by the mayor or judge of the police court, and shall, by himself or an officer of the police to be by him designated, attend on the sittings of those courts, to execute the orders and process thereof, and preserve order therein. [66 v. 173, § 146.]

Powers, etc., same as marshal.

SEC. 11. He shall have the same powers, perform the same duties, and be subject to the same responsibilities as are imposed on the marshal in this chapter. [66 v. 173, § 147.]

Compensation.

SEC. 12. He shall receive for his compensation, from the corporation, such sum, payable quarterly, as the council may by ordinance prescribe, not exceeding fifteen hundred dollars per annum, and from the county, in state cases, not exceeding five hundred dollars per annum, to be allowed by the county commissioners. [66 v. 173, § 148.]

He shall receive no perquisites.

SEC. 13. In no case shall he, or the lieutenant or watchman who may be detailed by him to attend on the police court, demand or receive any perquisite, fee, or reward, other than is authorized by law. [66 v. 174, § 149.]

Disposition of fines, etc.

SEC. 14. All fines, penalties, and costs collected by the chief of police, lieutenant, or watchman, shall be paid over to the clerk of the police court; and the same fees shall be charged and collected by the chief of police, from persons convicted, as the marshal is herein authorized to charge and collect for similar services. [66 v. 174, § 150.]

CHAPTER 4.

LIMITATIONS ON FINE AND IMPRISONMENT; CIVIL ACTION FOR FINE; LIMITATION IN TIME OF PROSECUTION.

SECTION
1. How ordinances enforced.
2. Limit to fine.
3. Imprisonment at hard labor.
4. Civil action for fine.
5. Limitation one year.
6. Party committed in default of payment.
7. Imprisonment, where to be made.
8. How imprisonment in county jail prohibited.
9. When prohibition avoided by act of corporation.

How ordinances, etc., enforced.

SECTION 1. By-laws and ordinances of municipal corporations may be enforced by the imposition of fines, forfeitures, and penalties, on any person offending against any such by-law or ordinance; and the fine, penalty, or forfeiture may be prescribed in each particular by-law or ordinance, or by a general by-law or ordinance made for that purpose; and municipal corporations shall have power to provide, in like manner, for the prosecution, recovery, and collection of such fines, penalties, or forfeitures. [66 v. 167, § 105.]

Amount of fines, etc.

SEC. 2. Fines, penalties, and forfeitures which do not exceed the sum of fifty dollars for any specified offense, or violation of the by-law or ordinance, or double that sum for each repetition of such offense or violation, or which do not exceed ten dollars for each day where the thing prohibited or rendered unlawful is, in its nature, continuous in respect to time, shall not be deemed unreasonable; but where in any by-law or ordinance a greater fine, penalty, or forfeiture is imposed than as above specified, it shall be lawful for the court or magistrate, in any suit or prosecution for the recovery thereof, to reduce the same to such amount as may be

deemed reasonable and proper, and to permit a recovery or render judgment accordingly. [66 v. 167. § 106.]

Imprisonment at hard labor.

SEC. 3. In addition to the fines and penalties above specified, the council may provide for a further penalty of imprisonment, for any term not exceeding thirty days, and for keeping persons convicted at hard labor during their term of imprisonment, at such time and place, and in such manner, as may be prescribed by ordinance. [66 v. 166, § 107.]

How fines, etc., recovered.

SEC. 4. Fines, penalties, and forfeitures may, in all cases, and in addition to any other mode provided, be recovered by suit or action before any justice of the peace, or other court of competent jurisdiction, in the name of the proper municipal corporation, and for its use; and in any suit or action where pleading is necessary, it shall be sufficient if the petition set forth generally the amount claimed to be due in respect of the violation of the by-law or ordinance, referring to its title, and the date of its adoption or passage, and showing, as near as may be practicable, the true time of the alleged violation. [66 v. 167, § 108.]

Suits must be commenced within one year.

SEC. 5. Suits or prosecutions for the recovery of fines, penalties, or forfeitures, or for the commission of any offense made punishable by any by-law or ordinance of any municipal corporation, shall be commenced within one year after the violation of the ordinance, or commission of the offense, and not afterward. [66 v. 167, § 109.]

Party to be committed in default of payment.

SEC. 6. When a fine is imposed for the violation of an ordinance of the corporation, and the same is not paid, the party convicted shall, by order of the mayor, or other proper authority, or on process issued for the purpose, be committed until such fine and the costs of prosecution are paid, or the party is discharged by due process of law. [66 v. 168, § 110.]

Imprisonment, where to be made.

SEC. 7. Imprisonment under the ordinances of a municipal corporation shall be in the work-house or other jail of the corporation, if the corporation is provided with such work-house or a jail; and any corporation not provided with a work-house, or other jail, shall be allowed, for the purpose of imprisonment, the use of the jail of the county, at the expense of the corporation, until such corporation is provided with a prison, house of correction, or work-house; and all persons so imprisoned in the county jail shall be under the charge of the sheriff of the county, who shall receive and hold such persons in such manner as may be prescribed by the ordinances of the corporation, until discharged by due course of law. [66 v. 168, § 111.]

Imprisonment in county jail may be prohibited.

SEC. 8. The county commissioners may, at their discretion, on giving ninety days' written notice to the council of any corporation, prohibit the use of the county jail for the purpose authorized in this chapter. [66 v. 168, § 112.]

Limit of such prohibition.

SEC. 9. If, within ninety days after such notice is given, the council of such corporation efficiently provide, by the passage of appropriate ordinances, and the making of the

necessary contracts, for the immediate erection of a prison, work-house, or house of correction, the corporation shall continue, notwithstanding the notice and prohibition provided for in the preceding section, to have the use of the county jail for the purpose of imprisonment, until such prison, work-house, or house of correction, is erected and ready for use. [66 v. 168, § 113.]

CHAPTER 5.

POLICE BOARDS AND OFFICERS.

SUBDIVISION I. *In cities of the first grade of the first class.*

SUBDIVISION II. *In cities of the second grade of the first class.*

SUBDIVISION III. *In cities of the third grade of the first class.*

SUBDIVISION IV. *In cities of the first and second grades of the second class.*

SUBDIVISION V. *In villages, and in cities of the second class other than the first and second grades.*

SUBDIVISION I.

SECTION
1. Board of police commissioners in Cincinnati.
2. Officers of board.
3. Commissioners not to be candidates for or hold any elective office; removal.
4. Regular and special meetings of board; quorum.
5. Rules and regulations for government of police.
6. General powers of board.
7. In case of riot, insurrection, etc.
8. President may call out whole force, etc.
9. General duties of board and police force.
10. Police force, how constituted, and its officers.
11. Qualifications of members of force.
12. Term of members of force; removal.
13. Oath of members of force; bonds.
14. Vacancies in police force, how filled.
15. How lieutenant reduced to rank of patrolman.
16. Secret detectives.
17. Substitute policemen.
18. Appointments of special police from other departments of corporation.

SECTION
19. Mounted policemen.
20. Requirements as to uniforms and badges.
21. Exemption of members from military and jury duty; arrest, etc., while on duty.
22. Duties of board and force with respect to primary and other elections.
23. Estimate for police purposes to be transmitted to council through auditor.
24. Duty of council with respect to levying tax; board to disburse same.
25. Power of board to appropriate money for expenses, etc.
26. Compensation of officers and members of force.
27. How paid.
28. Presents, fees, gifts, etc., to members of force prohibited.
29. Expenses of detecting crime and arresting criminals; how paid.
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32. Publication of notice where contract exceeds five hundred dollars.
33. Continuation of pay of disabled member of force.
34. Police relief fund.
35. Fines, forfeitures, etc., to be paid to credit of police relief fund.
36. Members of force to make rules and regulations for disbursement of fund, and elect a board of directors.
37. Organization and duties of the board of directors.
38. Board of police commissioners to have charge of markets and market-houses.
39. Term of market-masters, etc.; how removed.
40. Fund for market-house purposes.
41. Duty of police upon commission of crime.
42. Power of president of board and superintendent of police to issue warrants.
43. Power of members of board and clerk to issue subpœnas.
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44. Power of president of board to issue search-warrant.
45. Disposition of stolen property.
46. Penalty for neglect of member of force to deposit stolen property.
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48. Supervision of pawnbrokers, etc.
49. Right to examine books of pawnbrokers, etc.
50. Penalty for resisting officer in discharge of duty.
51. Duty of board in relation to gambling houses, etc.
52. Duty of board with respect to arrested person and property seized.
53. Penalty for failure to cause unlawful use of premises to cease.
54. Order to seize gaming table or device; destruction of same.
55. Penalty for having burglars' tools in possession.
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SUBDIVISION II.

57. Board of commissioners in Cleveland.
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60. App'ment of officers and members of force; special patrolmen.
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66. Duty when crime committed.
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68. Rules and regulations.
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71. Fees, gifts, etc., prohibited.
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73. Charges against policemen, how tried.
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75. Costs of trial, how taxed and collected.
76. Police life and health insurance fund.
77. Who entitled to benefits of, and when.
78. Board to expend said fund.
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81. Special police from other departments of corporation to be appointed.
82. Patrolmen for special duties —how appointed.
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84. Stolen property; duty of members of force in regard thereto.
85. Record and disposition of.
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87. Books of registry of lost property, etc., to be kept.
88. Record of accounts and proceedings of board to be kept.
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91. Proposals to be advertised for; member not to be interested in contracts.

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92. Officer making arrest to make return of same.
93. Arrested person; detention; trial.
94. Clothing of prisoner; disposition of.
95. Detention of witnesses.
96. Bail by person arrested.
97. Police, a city charge.
98. Levy for support of police.
99. Moneys paid from police fund to be certified.
100. Limitation of expenses.
101. Books and accounts of board to be open to inspection of council.
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110. Deputy superintendent may be appointed.
111. Police not to enter drinking saloon, etc.
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120. President of board; oath of members.
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125. Ineligibility to other offices.
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130. Term of office; vacancies.
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134. Secretary of board, his salary, duties, etc.
135. Rules and regulations.
136. Vacancies in force, how filled.
137. Salaries.
138. Fixed by board, and how paid.
139. Member not to receive fee, gift, or reward, etc.
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141. Judicial powers and duties of board.
142. Party suspended to pay costs, etc.
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144. Member of force injured entitled to relief from fund.
145. Police precincts and station-houses to be established.
146. Power of board to suppress nuisance, etc.
147. Arrests to be reported.
148. Police funds, how drawn from treasury.
149. Reports by superintendent, secretary, and board of police.
150. Commissioners and police not to be candidates for or hold other office.
151. Deputy superintendent.
152. Powers of mayor to suspend officer.
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SECTION
154. Appointment of police force, except in Cincinnati, Cleveland, Toledo, Columbus, and Dayton.
155. Policemen's bonds.
156. Officers of police, etc.
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158. Powers and duties of policemen.
159. Arrest upon view, etc.
160. Suspension of policemen for cause.
161. Compensation of policemen.

SUBDIVISION I. IN CITIES OF THE FIRST GRADE OF THE FIRST CLASS.

Board of police commissioners in Cincinnati.

SECTION 1. All police powers and duties, connected with and incident to the appointment, regulation, and government of a police force in cities of the first grade of the first class, shall be vested in a board of five members, heretofore appointed by the governor, one of said members having been appointed for one year, one for two years, one for three years, one for four years, and one for five years; and hereafter, at each annual municipal election, a member of the board shall be elected by the electors of such city, to serve for the term of five years, his term commencing upon the expiration of the term of the member whom he succeeds; but if a vacancy occur from any cause other than the expiration of a term, the remaining members of the board shall appoint a suitable person to hold the office until the next regular municipal election, when the electors of such city shall elect his successor, to serve for the remainder of the unexpired term. [74 v. 42, § 1.]

Election.

Officers of board:

President.

Clerk.

Bond of clerk.

SEC. 2. Annually, at the time the member of the board, commissioned for a regular term, is sworn, the board shall select from its members, a president; and an elector of the city, not a member of the board, shall, at the same time, be elected by the board, clerk of the police department, who shall act as secretary of the board and of the superintendent of police; and he shall give bond, to the acceptance of the board, in the sum of five thousand dollars. [74 v. 42, § 1.]

Commissioner not to be candidate for or hold any elective office.

Removal of commissioners by governor.

Member of board or force not to be delegate, etc.

SEC. 3. Any commissioner who, during the term of his office, accepts any other place of public trust or emolument, or who, during the same period, knowingly consents to his nomination for an office elective by the people, or fails publicly to decline the same within twenty days succeeding his nomination, shall be deemed to have thereby vacated his office; and for official misconduct, any commissioner may be removed by the governor; and no member of the police force shall be a delegate to, or otherwise take part in any primary or other political convention or election, except to cast his vote. [74 v. 42, 46, §§ 1, 8.]

Regular and special meetings of board.

SEC. 4. Meetings for the transaction of business shall be held upon some particular day, to be designated by the board, and at such other times as the board may deem necessary, at which meetings the president shall preside; and in his

absence or inability to act, the board may designate some other member to act as president during said absence or inability; such acting president during the time shall have all the powers, duties, and responsibilities of the president of said board; and a majority of the board shall constitute a quorum for the transaction of business. [74 v. 42, § 1.]

Quorum.

Rules and regulations for government of force.

SEC. 5. The board shall have power to enact, modify, repeal, and publish, from time to time, orders, rules, and regulations for the government, discipline, and duties of the police force; and shall make such rules and regulations for the government of the market-masters, the market police, and the laborers employed, as it may deem necessary for their proper government and discipline, and may also make such rules and regulations for the government of the markets of such city as it may deem necessary and proper, not incompatible with the laws of the state or the ordinances of such city. [73 v. 71, § 3; 74 v. 46, § 8.]

General powers of board.

SEC. 6. The board shall appoint the police force, and possess full power and authority over the police organization, government, and discipline within such city; and shall moreover have possession and control of all property, books, records, and equipments belonging to or under the control of the police authorities, and shall have the other powers and perform the other duties specified in this subdivision, and the chapters in this title relating to the boards of health and fire department. [74 v. 43, §§ 2, 4, 14.]

In case of riot, insurrection, etc.

SEC. 7. The board is hereby invested with, and shall, when necessary, exercise all the powers which are conferred by law upon mayors of cities and sheriffs of counties, in respect to requiring the services of the military, in aid of the civil authorities, to quell riots, suppress insurrection, protect property, and preserve public tranquility; and such investiture of power shall exclude, within the city, the exercise of similar powers by the mayor of such city, or sheriff of the county in which the city is situated. [74 v. 43, § 2.]

President may call out whole force, etc.

SEC. 8. In case of riot, or insurrection, or any like emergency, within such city, which, in the judgment of the president of the board of police commissioners, requires the intervention of the police force, he shall have power to call out the whole force, and control the same during the emergency, or until the board may have time to convene and take action thereon; and in case of any emergency in such city, which, in the judgment of the board, requires a temporary increase in the numbers of the police force, the board shall have the power to appoint as many other patrolmen, or officers, as they deem necessary, to serve as long as such emergency exists, not exceeding five days. [74 v. 49, § 17.]

Temporary increase of force.

General duties of board and police force.

SEC. 9. It shall be the duty of the board, and of the force hereby constituted, at all times of the day and night, within the boundaries of the city, to preserve the public peace, prevent crime, arrest offenders, protect rights of persons

and property, guard the public health, preserve order, remove nuisances existing in the public streets, roads, places, and highways, report all leaks or other defects in water-pipes and sewers to the proper authorities, provide a proper force at every fire, in order that thereby the firemen and property may be protected, protect strangers and travelers at steamboat, and ship landings, and railway stations, and generally to obey and enforce all ordinances of the city council, criminal laws of the state, and of the United States. [74 v. 43, § 2.]

Police force, how constituted, and its officers.

SEC. 10. The police force shall be composed of a superintendant of police, and inspector of police, whose duty it shall be to act under the direction of the superintendent, as his deputy or assistant, and perform such other service as may be required of him by the board or superintendent; so many lieutenants of police as may be necessary, not to exceed twenty; so many police-court officers and station-house keepers as may be necessary; and so many watchmen or patrolmen as the board may deem proper, not to exceed three hundred. [74 v. 44, § 4.]

Qualifications of members of force.

SEC. 11. Each member and officer of the police force shall be a citizen of the United States, and a resident citizen for three years of the city in which he is appointed, and able to read and write the English language understandingly. [74 v. 44, § 4.]

Term of members of force.

SEC. 12. Appointments on the police force shall be during good behavior and the pleasure of the board of police commissioners. [74 v. 44, § 4.]

Oath of member of force.

SEC. 13. Each officer and member of the police force, private policeman, special policeman, and substitute policeman, before entering upon the discharge of his duties, shall take an oath before one of the police commissioners, all of whom are hereby empowered to administer the same, to well and faithfully discharge the duties of his office; which oath shall be subscribed by the person taking it, and shall be filed and preserved in the office of the police commissioners; the superintendent shall give a bond for the faithful discharge of his duties in the sum of twenty thousand dollars, to be approved by the board and the city solicitor, which shall be filed in the city clerk's office, and thereafter, under the direction and control of the board, he shall have command and control of the police force of such city; and each lieutenant of police shall give bond in the sum of five thousand dollars, and each patrolman in the sum of one thousand dollars, with sureties to the satisfaction of the board and city solicitor, for the faithful discharge of his duties, and for the payment of any damages that may be adjudged against him by any competent tribunal, for the illegal arrest, imprisonment, or injury by him of any person. [74 v. 45, § 7.]

Bonds.

Vacancies in police force how filled.

SEC. 14. Vacancies occurring in any grade of the police force, except that of the superintendent, clerk, or inspector, shall be filled by the board from the next lower grade; but the superintendent, clerk of the police department, and inspector, shall be appointed and removed at the pleasure of the board. [74 v. 45, §§ 5, 8.]

How lieutenant reduced to patrolman.

SEC. 15. Any lieutenant may, at any time, by the unanimous vote of the board, and without written and specific charges preferred against him, be reduced to the rank of patrolman, and ordered to patrol duty. [74 v. 44, § 4.]

Secret detectives.

SEC. 16. The board shall have power to detail members of the regular force to act as secret detectives, who shall be under the control of the board and the superintendent; and such secret detectives may be allowed by the board, as extra compensation, a sum not exceeding one hundred dollars each. [74 v. 45, § 5.]

Substitute policemen.

SEC. 17. The board may appoint a sufficient number of substitutes to fill the vacancies occasioned by the absence of any members of the force, who shall receive compensation only for the time they serve, and the amount of such compensation shall be deducted from the pay of the absent member. [74 v. 49, § 17.]

Appointment of special police from other departments of corporation.

SEC. 18. The board is hereby authorized to appoint persons of suitable character, who may be in the employment of the city in other branches or departments, special patrolmen or policemen; but such special policemen shall not be paid for their services as policemen, either from the police fund of [or] the city or county treasury; and such policemen shall possess the same power as the regular patrolmen, and shall obey the rules and regulations of the board, and conform to its general discipline. [74 v. 54, § 11.]

Mounted policemen.

SEC. 19. The board shall, upon the passage of an ordinance or resolution, and the making an appropriation therefor, and in conformity with such resolution or ordinance by the common council of such city, employ and equip mounted policemen, in such manner, for such compensation, and for such districts within the corporate limits of the city, as shall be prescribed by the common council thereof. [74 v. 44, § 4.]

Requirements as to uniforms and badges.

SEC. 20. Every member of the police force, while on duty, shall wear a uniform to be prescribed by the board, and shall, at all times, in public, wear a badge of his office, to be furnished by the board. [74 v. 46, § 8.]

Exemption of members from military and jury duty, etc.

SEC. 21. No person holding office under this subdivision shall be liable to military or jury duty, or to arrest on civil process, nor to service of subpœnas from civil courts, while actually on duty. [74 v. 55, § 15.]

Duties of board and force with respect to primary and other elections.

SEC. 22. The board shall detail, on the day of any primary or other election in such city, one or more patrolmen, as it may deem necessary, to each election poll, provide ballot-boxes for use at any and all such elections, and see that the arrangements for voting at such polls are such as to prevent any unavoidable crowding of voters, and that the challengers

of all parties have fair and equal room, rights, and privileges for the discharge of their duties, and that the judges of the election are fully protected from any and all interference in the counting of the votes in a legal, orderly, open, and public manner, and they shall provide for the custody of the ballot-boxes at all times, except during the taking, receiving, and counting the votes; and such city shall pay the expenses of procuring and taking care of the ballot boxes. [74 v. 46, § 8.]

Estimate for police purposes to be transmitted to council through auditor.

SEC. 23. The fund required for all purposes, in carrying out the provisions of this subdivision, shall be annually estimated by the board, and, on or before the first Monday of May, in each year, reported to the city auditor, who shall record and file the same, and submit it to the committee on finance of the common council, together with an ordinance levying a tax therefor, for the year commencing on the first of March thereafter. [73 v. 74, § 13.]

Duty of council with respect to levying tax.

SEC. 24. The common council is hereby required to levy and cause to be collected such tax in the same manner as other taxes are now or may hereafter be levied and collected in such city; and such funds shall be certified to the treasurer of the city by the auditor, as the police fund, and shall

Board to disburse same.

be held by such treasurer as other city funds, subject only to the order of the police commissioners, as herein provided; and any interest derived from the deposit of such fund shall be credited to the police fund. [74 v. 48, § 14.]

Power of board to appropriate money from fund for expenses, etc.

SEC. 25. For all expenses incurred by the board, such as erecting buildings, rent, repairs, advertising, printing, stationery, postage stamps, telegrams, fuel, lights, feeding prisoners, clubs, whistles, badges, and such other incidental expenses as may be necessary to carry out the provisions of this subdivision, subject to the restrictions herein provided, the board shall have power to appropriate money to pay the same out of the police fund, and thereupon an order, signed by the president, and countersigned by the clerk of the board, shall be drawn upon the city auditor, payable to the person to whom such sum may be due, specifying the purposes for which the appropriation was made, and the city auditor shall immediately draw his warrant upon the city treasurer, payable to the person in whose name the order was drawn, and the treasurer shall pay the same out of the police fund; and the secretary or clerk of the board shall make an itemized statement to the board at the end of each and every month, of the amount so expended and to whom paid. [74 v. 48, § 12.]

Compensation of officers and members of force.

SEC. 26. The officers and members of the police force shall receive such compensation as shall be fixed by the board; provided, that the superintendent of police shall not receive a salary exceeding twenty-five hundred dollars, eight hundred dollars of which sum shall be paid by the county in which such city is situated; the inspector of police shall receive a salary not exceeding fifteen hundred dollars, lieutenants not exceeding nine hundred dollars, police court officers not ex-

ceeding eight hundred dollars, patrolmen not exceeding eight hundred dollars, and station-house keepers not exceeding six hundred dollars per annum, each. [74 v. 44, § 4]

How paid.

SEC. 27. The compensation of members of the police force shall be paid semi-monthly; and the clerk of the police department shall, semi-monthly, draw his warrant, attested by the president of the board, countersigned by himself, in favor of each member of the police force, for the amount of salary due him, which shall be presented to the city auditor, who shall thereupon draw his warrant therefor upon the city treasurer, payable to such member, and the treasurer shall pay the same. [74 v. 48, § 11.]

Presents, fees, gifts, etc., to members of force prohibited.

SEC. 28. No member of the police force shall, for his own benefit, under any pretense whatever, receive, or share in any present, fee, gift, or emolument, for public services, other than the regular salary and pay, except by the consent of the board and superintendent, publicly given; nor shall any member share in or receive any fee, gift, or reward from any person who may become bail for any arrested, accused, or convicted person, or who may become surety for any such person on error to the judgment or decision of any court or magistrate, or any fee, gift, or reward, in any case from an attorney at law, who may prosecute or defend any person arrested or prosecuted for any offense within the county within which such city may be situated; nor shall any such member, either directly or indirectly, interest himself or interfere in any manner whatever in the employment of any attorney to aid in the defense of any person arrested or accused; and for any violation of either of the foregoing provisions, the person so offending shall be immediately removed from the police force. [74 v. 46, § 7.]

Expenses of detecting crime and arresting criminals, how paid.

SEC. 29. The actual and necessary expenses incurred by any member of such police force, in serving or executing any process or subpœna in a criminal case, or in detecting, or endeavoring to detect, discover, or arrest any perpetrator of crime against the laws of the state, or to discover or reclaim any property feloniously stolen, concealed or carried away, when directed to do so by the superintendent or the president of the board of police, or by the prosecuting attorney of the county in which such city is located, shall be a charge against such county; and the amount of such expenses shall be made out in detail, and verified by the oath of the party to whom the same is due, to the effect that the sums therein charged have been actually paid out by him, and shall not include any items of traveling expenses in cases wherein transportation had been furnished to the party gratuitously and without pay by him, under whatever circumstances such free transportation may have been given; and when such bill has been audited and certified by the board of police commissioners, it shall be presented to the board of commissioners

of the county and shall be by them audited and paid, as other county expenses are audited and paid. [74 v. 51, § 7.]

Station-houses for accommodation of force and lodging of vagrants, etc.

SEC. 30. The board shall provide, when required, at the expense of the city, all necessary accommodations within such precincts as are contained within the boundaries of such city, for the station-houses required by the board for the accommodation of the police force of such precinct, for the lodging of vagrant or disorderly persons, and for the temporary detention of persons arrested for offenses or held as witnesses. [74 v. 55, § 16.]

Power of purchasing land for police purposes, erecting buildings, etc., vested in board.

SEC. 31. The power of purchasing lands for police purposes, and the supervision and control of the erection, altering or repairing any station-houses or buildings, shall be solely vested in the board of police commissioners; and all expenses incurred for the above purposes shall be paid out of the police funds of such city, upon the order of the board; provided, that no expenditure exceeding one thousand dollars for the purchase of land or the erection of new buildings, or alteration or repair of old buildings, shall be made by the board, unless the same shall have been first approved by the common council. [74 v. 55, § 16.]

Publication of notice where contract exceeds five hundred dollars.

SEC. 32. At least ten days' notice shall be given, in some newspaper of general circulation in such city, of the reception of proposals for the performance of any contract exceeding five hundred dollars in amount, and such contract shall be awarded to the best and lowest bidder, who shall furnish satisfactory security for the performance of the same; and no commissioner or other officer of the board, or employé of the department, shall be interested in any contract connected with the police department. [74 v. 55, § 16.]

Continuation of pay of disabled member of force.

SEC. 33. When a member of the police force becomes bodily disabled, in consequence of and while in the performance of official duty, he may continue to draw his regular salary, at the discretion of the board, for a period not to exceed one month. [73 v. 74, § 15.]

Police relief fund.

SEC. 34. The board of police commissioners are hereby authorized to create a police relief fund, by assessing upon each member of the force, a sum, to be deducted from the monthly pay of each member, not exceeding fifty cents per month; and the sum so fixed and deducted, shall be, by the clerk of the board, paid into the city treasury, to the credit of the police relief fund, and shall be used exclusively to relieve members of the force, when sick or disabled from the performance of duty, for funeral expenses, relief of their families in case of death, or for pensions when honorably retired from the force. [74 v. 53, § 9.]

SEC. 35. All fines and forfeitures from policemen, market-masters, assistant market-masters, or market-police, all rewards, fees, proceeds of gifts and emoluments that may be allowed by the board to be paid and given for or on account

of any extrordinary service of any member of the force, all money arising from the sale of unclaimed property or money, after deducting all expenses incident thereto, shall be paid into the city treasury, to the credit of the police relief fund; and the police commissioners shall be trustees of the fund, and shall invest the same, from time to time, when there is a surplus, in United States bonds, bonds of the state of Ohio, bonds of such city, or bonds of the county in which such city is located. [74 v. 53, § 9.]

Fines, forfeitures, etc., to be paid to credit of police relief fund.

SEC. 36. The members of the police force of the city, shall make such rules and regulations as to the disbursement of the police relief fund to the members, as they may deem proper, such rules and regulations to be approved by the board of police commissioners; and the members of the police force, each having one vote, shall elect, annually, on the first Wednesday after the first day of January, in each year, a board of seven members from their own number to be known as the board of directors of the police relief fund, to whom shall be intrusted the entire management of the fund, and its disbursement, subject to the approval of the police commissioners, as heretofore provided. [74 v. 54, § 9.]

Members of force to make rules and regulations for disbursement of fund.

Members of force to elect a board of directors from their own number.

SEC. 37. The board of directors shall organize by electing a president and secretary, and no payment of any money shall be made from the relief fund, save for investment by the trustees, except upon the order of the board of directors, signed by the president, countersigned by the secretary, and approved by the board of police commissioners; members who have resigned, or have been dismissed from the force, shall have no interest in or claim on such fund; and members who are honorably retired from the force, shall only have such interest in the fund as may be fixed in the rules and regulations in relation to the fund by the board of directors. [74 v. 54, § 9.]

Organization and duties of the board of directors.

SEC. 38. The board of police commissioners shall have charge of and control the police and sanitary regulations of all markets and market-houses; shall appoint all market-masters and such number of market police as may by law or ordinance of such city be required; and shall employ such force of laborers as may be necessary to keep the market-houses clean and in proper sanitary condition. [74 v. 52, § 8.]

Board of police commissioners to have charge of markets and market-houses.

SEC. 39. All appointments of market-masters, assistant market-masters, or market police made by the board of police commissioners, shall be for and during good behavior, and physical or mental ability to discharge the duties pertaining to such appointment, and no appointee shall be removed but for physical or mental disability, except the chief market-master, until written charges are preferred against him for neglect of duty, misconduct, or violation of the law of the state, or ordinance of such city, or for violation of the rules and regulations of the board in relation to markets and market-houses; and such charges shall be in writing,

Term of market-masters, etc.

How removed.

and the same proceedings shall be had as in the trial of policemen, as provided in section twelve of this sub-division, and if the party accused is convicted by the board, he may be punished by forfeiting and withholding pay for a specified time, or dismissal from office, but no more than thirty days' pay shall be forfeited and withheld for one offense; but the chief market-master and all laborers employed about the market-houses may be dismissed at the pleasure of the board. [74. v. 52, § 8.]

Estimate of funds for markets and market-house purposes.

Duty of council in relation to levy and collection of tax therefor.

Limitation.

SEC. 40. The board of police commissioners shall make an annual estimate for the necessary funds to defray the expenses in carrying out the provisions of this subdivision relating to markets and market-houses, the estimate to be known as the expense of markets and market-houses, which estimate shall be transmitted to the auditor of the city, together with the annual May estimate for police purposes, and it shall be by him transmitted to the common council, whose duty it shall be to levy and cause to be collected such tax in the same manner as other taxes are now or may hereafter be levied and collected in such city; provided, that the annual estimate by the commissioners shall not exceed the aggregate amount expended by such city for the same service for the fiscal year beginning in 1876 and ending in 1877, except the same be approved by the common council; and the fund shall be paid into the treasury of such city to the credit of markets and market-houses, and shall be under the control of, and subject to, disbursement by the police commissioners, under the same restrictions and regulations as are prescribed by the provisions of this subdivision in relation to the disbursement of the police fund. [74 v. 53, § 8.]

Power of board over fund.

Duty of police upon commission of crime.

SEC. 41. When a crime is committed in such city, whether the person accused or suspected flees from justice or not, the superintendent of police shall immediately report to the chief of detectives all facts which may have come to his knowledge concerning the offense, or the accused, or suspected party; and the board may, in its discretion, authorize any person or persons belonging to the police force to arrest such accused or suspected person, and return him to the proper criminal court having jurisdiction of the offense, for trial. [74. v. 44, § 2.]

Power of president of board and superintendent of police to issue warrants.

SEC. 42. The president of the board and superintendent of police, shall each have power to issue criminal warrants in all cases upon the complaint of any person on oath, making the same returnable before the judge of the police court of such city, and they may each commit for examination. [74 v. 47, § 9.]

Powers of members of board and clerk to issue subpœnas.

SEC. 43. The board of police commissioners and the clerk of the board shall each have power to issue subpœnas tested in the name of the president, to compel the attendance of witnesses upon any proceeding authorized by this subdivision and by the regulations of the board; witnesses for

whom such subpœnas are issued shall be entitled to the usual fee prescribed for witnesses; and each commissioner of police, the superintendent, and the clerk of the board of police commissioners, are hereby authorized and empowered to administer oaths and affirmations to any person summoned and appearing in any matter or proceeding authorized as aforesaid, or to take any deposition necessary to be taken under the rules and regulations of the board, or for the purposes of this subdivision; and in case any person subpœnaed under this section fails or refuses to obey such subpœna, or refuses to take, when required, the proper oath or affirmation, or to answer any proper question, the board of police commissioners shall have the same power to compel attendance and punish disobedience as justices of the peace in like cases. [74 v. 47, § 9.]

Power of president of board to issue search warrant.

SEC. 44. Upon complaint, on oath, that any personal property has been stolen or embezzled, and that the complainant believes that such property is concealed in any particular house or place in such city, or within four miles of the corporate limits thereof, the president of the board of police commissioners may, if he is satisfied that there is reasonable ground for such belief, issue a warrant to search for such property; which warrant shall be directed to some officer of the police force, and shall command him to search the place, which place shall be designated, and the property particularly described in the warrant, and to bring such stolen property before the judge of the police court; and upon the return of such warrant to such judge, he shall proceed thereon in like manner as if such warrant had been by him issued; and no fees shall be allowed for the issue or execution of the warrants aforesaid. [74 v. 49, § 3.]

Stolen property recovered to be kept in designated place.

Record thereof to be kept.

Inventory to be taken.

If not claimed, to be returned to person from whom taken.

To be retained as evidence.

SEC. 45. All stolen or other property recovered by members of the police force, shall be deposited and kept in a place designated by the board of police commissioners; every such article of property shall be entered in a book kept for that purpose, by the secretary of the board, together with the name of the owner, if ascertained, and the name of the place where found, and of the person from whom taken, with the general circumstances, and the date of its receipt and the name of the officer receiving the same; an inventory of all money, or other property, shall be given to the party from whom the same was taken, and in case the same is not, within thirty days after such arrest and seizure, claimed by some person, it shall, unless otherwise ordered by the board, be delivered to the person from whom the same was taken, and to no other person, either attorney, agent, factor, or clerk, except by special order of the board; and in case such money or property is, within thirty days, claimed by any other person, it shall be retained by such custodian until after the discharge or conviction of the person from whom the same was taken, and so long as it may be required as evidence in

To be delivered to rightful owner if he appear.

any case in court; and if such claimant establish, to the satisfaction of the police judge, that he is the rightful owner, the same shall be restored to him, otherwise it shall be returned to the accused personally, and not to any attorney, agent, factor, or clerk of such accused person, except upon special order of the board, after all liens and claims in favor of the board and the city, against the same, shall have first been discharged and satisfied. [74 v. 47, § 10.]

Penalty for neglect of member of force to deposit stolen property.

SEC. 46. In case of the neglect or refusal of any officer or patrolman to deposit the property taken or found in the possession of any person arrested, as provided in the preceding section, he shall be deemed guilty of a misdemeanor, and subject to indictment, or information, and be fined in a sum not exceeding three thousand dollars, and in no case less than the value of the property, or be imprisoned in the county jail not exceeding one month, or both; and the sentence of the court, in such cases, shall operate to vacate the office of the person so convicted. [74 v. 47, § 10.]

Disposition of stolen property where unclaimed for one year.

SEC. 47. All goods unclaimed for the period of one year, shall be sold by the superintendent of police, at public auction, after giving due notice thereof, by advertisement, published three times, in a newspaper of general circulation in such city. [74 v. 49, § 16.]

Superintendent and lieutenants to have supervision over pawnbrokers, etc.

SEC. 48. The superintendent of police, and the lieutenants of police within their districts, shall possess powers of general supervision and inspection over all pawnbrokers, junk-shop keepers, cartmen, hackmen, dealers in second-hand merchandise, intelligence-office keepers, and auctioneers, within such city; and in the exercise, and in furtherance of such supervision, may, from time to time, detail members of the police force to fulfill such special duties in the aforesaid premises, as may be ordained by the board. [74 v. 51, § 6.]

Right of member of force to examine books of pawnbrokers, etc.

SEC. 49. The superintendent, and the lieutenants within their districts, may, by authority in writing, empower any member of the police force, whenever such member is in search of property feloniously obtained, or in search of suspected offenders, to examine the books of any pawnbroker, or his business premises, or the business of any junk-shop keeper, or dealer in second-hand merchandise, or intelligence-office keeper; and such member of the force, when thereto authorized in writing, as aforesaid, and having in his possession a pawnbroker's receipt or ticket, shall be allowed to examine the property purporting to be pawned, pledged, or deposited on such receipt or ticket, in the possession of whomsoever such property may be; but no such property shall be taken from the possessor thereof, without due process or authority of law. [74 v. 51, § 6.]

SEC. 50. Any willful resistance to the superintendent, lieutenants, or to any member of the force, while in official

and due discharge of duty, by any of the persons named in the preceding section, shall be a misdemeanor, and such person, upon conviction thereof, shall be fined in any sum not less than ten nor more than five hundred dollars, and may be imprisoned in the county jail not more than three months, or both. [74 v. 51, § 6.]

Penalty for willfully resisting member of force, in discharge of his duty.

SEC. 51. Whenever the board ascertains, or receives satisfactory information, that any house, room, or premises within such city, or within four miles of the corporate limits thereof, is being kept or used as a common gaming house, or common gaming premises, for playing therein for wagers of money at any game of chance, or if the same is kept or used for any lewd or obscene public amusement, or the deposit or sale of lottery tickets or lottery policies, it shall be lawful for such board, and it shall be its duty, to authorize and direct the superintendent, or any other officer of the force, to enter such house, room, or premises, and forthwith arrest all persons therein found offending against any law, and seize all implements of gaming, lottery tickets, and lottery policies, and convey any person so arrested before the judge of the police court, and bring the articles to the office of the board. [74 v. 50, § 4.]

Duty of board in relation to gambling houses, etc.

SEC. 52. The superintendent of police shall cause such arrested persons to be vigorously prosecuted, and such seized articles to be destroyed; and the board shall cause the owner of such house, room, or premises, his agent, attorney, or representative, to be notified in writing, that such house, room, or premises is being used for an unlawful purpose, and it shall be the duty of the owner, agent, attorney, or representative to cause the use of the premises, for such unlawful purpose, to cease. [74 v. 50, § 4.]

Duty of board with respect to arrested persons and property seized.

SEC. 53. If any owner, agent, attorney or representative neglects or refuses, or fails to use diligence to cause the use of the premises for such unlawful purposes, to cease, as provided in the preceding section, within a reasonable time, to the satisfaction of the board, he shall, upon conviction thereof, for the first offense, be fined not less than fifty nor more than two hundred and fifty dollars, and shall be committed until the fine and costs are paid; and for the second or any subsequent offense he shall, upon conviction, in addition to the fine, be imprisoned in the county jail not less than fifteen days nor more than three months. [74 v. 50, § 4.]

Penalty for failure to use dilligence to cause use of premises for unlawful purposes to cease.

SEC. 54. Whenever the board ascertains or receives satisfactory information that there is any prohibited gaming table, or other gaming device, kept or used in such city, the board shall have power to authorize its president to issue, and it shall be its duty forthwith to order a warrant to be issued by him, directed to the superintendent of police, or some other officer of the police under the board, to seize and bring before the president such gaming table or other gam-

Order to seize gaming table or device.

ing device; and the officer charged with the execution of such warrant, shall have power to break open doors for the purpose of executing the same, and for that purpose may have the assistance of the whole police force; and it shall be the duty of the president, before whom any such prohibited gaming table or gaming device is brought, to cause the same to be destroyed, by burning or otherwise. [74 v. 50, § 5.]

Destruction of same.

Penalty for having burglars' tools in possession.

SEC. 55. Any person found in any such city, or within four miles of the corporate limits thereof, having in his possession any burglar's tools, or implements of any kind commonly used by burglars in breaking or entering houses, shall be deemed guilty of a misdemeanor, and upon conviction thereof before any police court or other court of such city having competent jurisdiction thereof, shall be fined in a sum not less than twenty-five nor more than one hundred dollars, or be imprisoned in the city work-house for a period not less than ninety days nor more than twelve months, or both. [74 v. 55, § 13.]

Penalty for using personal violence upon member of police force, etc.

SEC. 56. It shall be a misdemeanor punishable by a fine not exceeding one hundred dollars, or imprisonment in the work-house or county jail not less than one month nor more than three months, or both fine and imprisonment, for any person, without justifiable or excusable cause, to use personal violence upon any member of the police force, when in the discharge of his duty, or for any person not a member of the force to falsely represent himself as being such member. [74 v. 54, § 12.]

SUBDIVISION II. IN CITIES OF THE SECOND GRADE OF THE FIRST CLASS.

Board of commissioners in Cleveland.

SEC. 57. All police powers and duties connected with and incident to the appointment, regulation and government of a police force in cities of the second grade of the first class, shall be vested in and exercised by a board composed of the mayor of such city, who shall be president, and four commissioners, a majority of whom shall constitute a quorum for the transaction of business. [73 v. 47, § 1.]

Election and term of office of board.

Vacancies.

SEC. 58. The respective terms of office of such commissioners shall be four years; one commissioner shall be elected at each annual municipal election hereafter; and any vacancy in the board, caused by death, removal, or resignation, shall be filled for the unexpired term by the city council. [73 v. 47, §§ 2, 3.]

Secretary.

SEC. 59. The board shall appoint some suitable person to act as secretary, who shall receive such annual salary, not exceeding eighteen hundred dollars, as the board may determine, perform such duties as are hereinafter provided, and hold his office until removed by a majority of all the members of the board. [73 v. 48, § 5.]

Appointment of officers and members of force.

SEC. 60. The board shall have power, at any time, to appoint a superintendent of the police force, a captain of police, and an additional captain for each fifty patrolmen more than the first fifty, a lieutenant of police for each twelve patrolmen, and a sergeant of police for each police precinct, and also regular or compensated patrolmen, not exceeding one for each seven hundred and fifty inhabitants, as shown by the last federal census; but the number of patrolmen may be increased with the consent of the council; and the board shall have the power, in cases of emergency, to appoint as many special patrolmen as it may think proper, which appointments shall be reported to, and be subject to the action of, the city council at its next meeting. [73 v. 48, § 5.]

Special patrolmen in cases of emergency.

Secret police, detectives, etc.

SEC. 61. The board may, from the members of the force, appoint detectives, not exceeding ten in number, who shall act as secret police or detectives, one of whom shall be detailed as chief detective, bearing the rank of captain; and when from any cause a vacancy exists in the number so first appointed, the board may appoint to such vacancy the patrolmen which the record required to be kept, as hereinafter provided, shows to be most meritorious; and the board shall also appoint such suitable persons to act as door-men, janitors, attorney of police, and telegraph operators, as the demands of the service may require, who shall receive such compensation as the board may determine; in no case, however, exceeding the salary of patrolmen; and the board may, from the members of the force, appoint suitable persons, not exceeding eight in number, to attend the sittings and execute the orders of the police court. [73 v. 48, § 5.]

Removal or suspension of member.

SEC. 62. The board may, for cause to be assigned, on a public hearing, and on due notice, according to the rules to be promulgated by it, remove or suspend from office, or for any definite time deprive from pay, any member of such police force; it may make rules and regulations for the government and discipline of the force, and cause the same to be published; and may make and promulgate general and special orders to the force through the superintendent of police. [73 v. 48, § 5.]

Rules.

Powers of board.

SEC. 63. The board shall have the entire control of the police force of the city, possess full power and authority over the police organization, government, appointments, and discipline within the city, have the custody and control of all public property, books, records, and equipments belonging to the police department, and have power to erect and maintain all such lines of telegraph in such places within the city as for purposes of police the board deems necessary, whenever the council authorizes the establishment of such telegraph line or lines, and provides for the cost thereof. [73 v. 48, § 6.]

Duties of board.

SEC. 64. The board of police shall at all times cause the ordinances of the city to be properly enforced; and it shall

be the duty of the board at all times, when consistent with the rules and regulations of the same, and with the requirements of this subdivision, to furnish all the information desired, and comply with all the requests made by the city council or mayor; and they shall quell riots, suppress insurrections, protect property, and preserve the public tranquility. [73 v. 55, § 23.]

General duties of police.

SEC. 65. The board of police and the force hereby constituted shall, at all times of the day and night, within the boundaries of the city, preserve the public peace, prevent crime, arrest offenders, protect rights of persons and property, guard the public health, preserve order, remove nuisances existing in public streets, roads, places, and highways, report all leaks or other defects in water-pipes and sewers to the proper authorities, provide a proper force at every fire, in order that thereby the firemen and property may be protected, protect strangers and travelers at steamboat and ship landings and railway stations, and generally obey and enforce all ordinances of the city council, criminal laws of the state, and of the United States. [73 v. 49, § 7.]

Duty, when crime committed.

SEC. 66 When a crime is committed in such city, whether the person accused or suspected flees from justice or not, the superintendent of police shall immediately report to the chief of detectives all facts which may have come to his knowledge concerning the offense, or the accused or suspected person; and the board of police may, in its discretion, authorize any person belonging to the force to pursue and arrest such accused or suspected person and return him to the proper criminal court. [73 v. 49, § 7.]

Qualifications of members of force.

SEC. 67. No person shall be appointed to or hold office in the police force aforesaid who is not a citizen of the United States and a resident of the city. [73 v. 47, § 8.]

Rules and regulations.

SEC. 68. The qualification, enumeration, and distribution of duties, mode of trial, and removal from office of each member of the police force, shall be particularly defined and prescribed by rules and regulations of the board; provided, that no appointment, promotion, or removal of any officer or patrolman shall be valid unless approved by a majority of all the members of the board, and the vote so given shall be duly recorded by the secretary of the board. [73 v. 49, §§ 1, 8.]

Removals and suspensions of members of force.

SEC. 69. No superintendent, captain, lieutenant, sergeant, or patrolman, shall be removed, except on written charges preferred against him to the board of police, and after an opportunity shall have been afforded him of being heard in his defense; but the board of police shall have power to suspend any member of the police department of the city pending the hearing of the charges preferred against him; provided, that whenever a vacancy occurs in the office of captain of police, the same may be filled by appointment from among the persons then in the force as lieutenants of

police, and a like vacancy in the office of lieutenant of police may be filled by appointment from among the persons then in office as sergeants of police, and a like vacancy in the office of sergeant of police, may be filled by appointment from among the persons then in office as police patrolmen. [73 v. 49, § 8.]

Vacancies—how filled.

SEC. 70. The superintendent shall receive a salary not exceeding twenty-five hundred dollars per annum; each captain shall receive a salary not exceeding fifteen hundred dollars per annum; each lieutenant and detective a salary not exceeding twelve hundred dollars per annum; each sergeant a salary not exceeding one thousand dollars per annum; and each patrolman a salary not exceeding nine hundred dollars per annum; provided, the board shall have power to detail one or more patrolmen to the superintendent of police or secretary of the board, who shall receive a salary not exceeding one thousand dollars per annum; the pay in all cases to be fixed by the board, and the salaries to be paid monthly to the persons entitled thereto. [73 v. 49, § 8.]

Compensation and salaries.

SEC. 71. No member of the board of police or of the police force shall, for his own benefit, under any pretense whatever, receive or share in any present, fee, gift, or emolument for police service, other than the regular salary or pay provided by this subdivision, unless by the consent of a majority of the board; nor shall any member share in or receive any fee, gift, or reward from any person who becomes bail for an arrested, accused, or convicted person, or who becomes surety for any person on proceedings in error from the judgment or decision of any court or magistrate, or a fee, gift, or reward in any case from an attorney at law, who prosecutes or defends a person arrested or prosecuted for any offense within the county within which such city is situated; nor shall any such member, either directly or indirectly, interest himself or interfere in any manner in the employment of an attorney to aid in the defense of a person arrested or accused; and for a violation of either of the foregoing provisions, the person so offending shall be immediately removed from the police force. [73 v. 49, § 8.]

Fees, gifts, etc., prohibited; unless by special consent.

Interference prohibited.

SEC. 72. All moneys collected by the police court of such city, on account of the service by the police force, of writs issued by such court, shall be paid to the board of police, and such moneys, together with the moneys received by the board, from all sources whatever, the disposition of which is not otherwise provided for by this subdivision, shall constitute a fund to be called the contingent fund, out of which shall be paid all incidental or extraordinary expenses incurred by the board, and the payment of which is not otherwise provided for by this subdivision. [73 v. 50, § 9.]

Contingent fund.

SEC. 73. Any citizen of such city, with a view to the trial and suspension or removal from office of any officer or patrolman of the police force, may, on oath, in writing, pre-

Charges against policemen—how tried.

fer, before the board, charges touching the character, competency, or acts of such officer or policeman, or for misconduct, or the violation of the rules and regulations prescribed by the board; and the board, after reasonable notice to the person charged, shall proceed to his trial on the charges, and shall issue subpœnas, attested in the name of the president of the board, to compel the attendance of witnesses, administer oaths, and generally, for purposes of such trial, shall have the powers of justices of the peace in civil cases, so far as the same are applicable, and may make an order of removal or suspension for some certain period. [73 v. 50, § 10]

Costs of trial deducted from pay.

SEC. 74. If, on such trial, the charges be sustained, the officer or policeman shall pay the cost of such proceedings, and the same may be deducted from his pay; and in case of his suspension his pay shall cease from the date of the charges and during the period of suspension. [73 v. 50, § 10.]

Costs of trial, how taxed and collected.

SEC. 75. In trials under this subdivision the same costs shall be charged and taxed as in trials before justices, and collected on execution, to be issued by the police clerk on the certificate of the board, and order for execution; and the costs, when collected, shall be paid to the secretary of the board for the benefit of those concerned; but the board shall not tax or receive any fees for themselves or for any member of the police force. [73 v. 50, § 10.]

Police life and health insurance fund.

SEC. 76. Rewards, fees, proceeds of gifts and emoluments that may be allowed by the board of police, to be paid or given on account of extraordinary services of a member of the police force, and all unclaimed money, and the proceeds arising from the sale of unclaimed property, shall be paid into the city treasury, and shall constitute a fund to be called "the police life and health insurance fund;" and the persons who, from time to time, constitute the boards of police, are hereby declared the trustees of such fund, and may invest the same as they see fit, either in whole or in part, and have power to draw the same from the treasury for that purpose. [73 v. 51, § 11.]

Member of force injured, entitled to relief from fund.

SEC. 77. When a member of the police force, in the performance, and in consequence of the performance, of official duty, becomes bodily disabled, his necessary expenses during the disability may be paid from the fund provided for in the preceding section, at the discretion of the board. [73 v. 51, § 12.]

Board to expend such fund.

SEC. 78. The board shall inquire into the circumstances, and if satisfied the charge upon the fund is correct, may, in writing, order the same to be paid by the draft of the trustees upon the fund, signed by the president and secretary of the board; but the provisions of this subdivision, with respect to such fund, shall not apply to special patrolmen appointed, as hereinafter provided, at the request and expense of private parties. [73 v. 51, § 12]

Police precincts and stations.

SEC. 79. The board of police, for more effectually distributing and enforcing its police government and discipline, shall divide the city into precincts, without regard to ward boundaries, and assign lieutenants and sergeants of police to each of the precincts, as they deem for the best interests of such city; and may, from time to time, establish a station, or sub-station, in each precinct or division for the accommodation of the police force on duty therein. [73 v. 51, § 13.]

Board to promulgate orders, etc., through superintendent.

SEC. 80. The board shall promulgate all regulations and orders through the superintendent of police; and it shall be the duty of the police force to respect and obey the superintendent, subject to the rules and regulations of the board. [73 v. 51, § 13]

Special police from other departments of corporation to be appointed.

SEC. 81. The board of police is hereby authorized to appoint persons of suitable character, who may be in the employment of the city in other branches or departments, special policemen or patrolmen; but such special policemen shall not be paid for their services as policemen from the police fund or the city or county treasury; and such special policemen shall possess the same power as the regular police patrolmen, and shall obey the rules and regulations of the board, and conform to its general discipline. [73 v. 51, § 14.]

Patrolmen for special duties—how appointed.

SEC. 82. The board of police, whenever it sees fit, may, on the application of any person who shows the necessity thereof, appoint any number of additional patrolmen to do duty at any place within the city, at the charge and expense of the person by whom the application is made; and the patrolmen so appointed, after being sworn, shall be subject to the orders of the board of police, and shall obey the rules and regulations of the board, and conform to its general discipline, and to such other special regulations as may be made, and shall wear such dress or emblem as the board may direct; and during the term of their holding appointment they shall possess all the powers and privileges and perform all the duties of the patrol force herein prescribed; provided, that the party so applying for such appointment shall first pay into the trust fund, hereinbefore provided for, the sum of five dollars for each special patrolman thus appointed; and provided further, that the persons so appointed may be removed at any time by the board of police without assigning cause therefor. [73 v. 52, § 15.]

Notice of withdrawal of member from force.

SEC. 83. No member of the police force, under penalty of forfeiting the pay which may be due him, shall withdraw or resign, unless he shall have given two weeks' notice thereof, in writing, to the superintendent of police; and no person who shall have been removed for cause from the force, shall be reappointed by the board of police to any office in the police force, except by the unanimous consent of the board. [73 v. 52, § 16]

SEC. 84. All stolen or other property which comes into the possession of the members of the force, shall be depos-

Stolen property; duty of members of force in regard thereto. Failure to comply—punishment.

ited and kept in a place designated by the board of police; and in case of the neglect or refusal of any officer to so deposit the property taken or found in the possession of any person arrested, within five days after the same comes into his possession, he shall be deemed guilty of a misdemeanor, and subject to indictment or information, and be fined in a sum not exceeding three thousand dollars, and in no case less than the value of the property, or be imprisoned in the county jail not exceeding one month; and the sentence of the court in such cases shall operate to vacate the office of the person so convicted. [74 v. 136, § 17.]

Stolen property; record and disposition of.

SEC. 85. Every such article of property shall be entered in a book kept for that purpose by the secretary of the board, together with the name of the owner, if ascertained, and the name of the place where found, and of the person from whom taken, with the general circumstances and the date of its receipt, and the name of the officer recording the same; an inventory of all money or other property shall be given to the party from whom the same was taken; and if the property be not, within thirty days after such arrest and seizure, claimed by another person, it shall, unless otherwise ordered by the board, be delivered to the person from whom the same was taken, and to no other person, except by special order of the board. [74 v. 137, § 17.]

Stolen property retained, when required as evidence.

SEC. 86. In case such money or property be claimed within thirty days by any other person, it shall be retained by such custodian until after the discharge or conviction of the person from whom the same was taken, and so long as the same may be required as evidence in any case in court; and if such claimant establish, to the satisfaction of the police judge, that he is the rightful owner, the same shall be restored to him, otherwise it shall be returned to the accused; and all property or moneys that remain in possession of the board of police commissioners for a period of ninety days or more, without being claimed by any owner, shall be sold under the order and direction of the board of police at public sale, and the proceeds of such sale shall go the credit of the police life and health insurance fund; and in all cases where perishable property comes into the custody of the board of police, the same may be sold at any time the board shall order. [74 v. 137, § 17.]

Books of registry of lost property, etc., to be kept.

SEC. 87. The board shall cause to be kept books for the registry of lost, missing, or stolen property, for the general convenience of the public, and of the police force of the city; and also books of record, wherein shall be entered the name of every member of the police force, the place of his nativity, the time when and place where he became a citizen (if born out of the United States), his age, his former occupation, number of family, and the residence thereof, the date of appointment or dismissal from office, with the cause of the latter; and in every such record sufficient space shall be left against all such entries to make a record of the number of arrests

made by such members of the police force, or of any special services deemed meritorious by the captains of police. [74 v. 137, § 17.]

Record of accounts and proceedings of board to be kept.

SEC. 88. The board shall cause to be kept in proper books, the accounts of the board, and a record of their proceedings; and they shall preserve and file copies of all bills audited and allowed, and keep an accurate account of all the expenses of the police department, and cause to be kept and bound all police returns and reports. [74 v. 137, § 17.]

Station-houses for temporary detention.

SEC. 89. The board shall provide, when required, at the expense of the city, all necessary accommodations, within such precincts as shall be contained within the boundaries of the city, for the station-houses required by the board of police, for the accommodation of the police force of such precinct, for the lodging of vagrant or disorderly persons, and for the temporary detention of persons arrested for offenses or held as witnesses; and the board shall furnish such buildings suitably, and warm and light the same by day and night. [74 v. 138, § 18.]

Purchase of lands and other expenses—how paid.

SEC. 90. The power of purchasing lands for police purposes, and the supervision and control of the erection, alteration, or repair of such station houses or buildings, shall be solely vested in the board of police commissioners, and all expenses incurred for the above purpose shall be paid out of the police court funds of such city, after the same shall have been approved by the board of police, and duly certified to the city auditor, who shall place the same in the next ordinance for the payment of claims; provided, that for all contracts exceeding five hundred dollars in amount, payable out of the police court fund, the approval of the city council shall first be obtained; and provided further, that no greater amount shall be expended for the purposes aforesaid by the board in any one year than an amount equal to the sum paid into the fund, after the payment of the salaries of the police judge, prosecuting attorney of police court, police clerk, and deputy police clerks of the city, unless such expenses shall previously have been authorized by the city council, and provision made for its payment. [74 v. 138, § 18.]

Limitation of expenses.

Proposals to be advertised for.

SEC. 91. At least ten days' notice shall be given in some newspaper of general circulation in such city, of the reception of proposals for the performance of any contract exceeding five hundred dollars in amount; and such contract shall be awarded to the lowest and best bidder, who shall furnish satisfactory security for the performance of the same; and all contracts for the purposes aforesaid, exceeding five hundred dollars in amount, shall be subject to the approval of the city council; and no commissioner, officer of the board, or employé of the department, shall be interested in any contract connected with the police department. [74 v. 138, § 18.]

Member not to be interested in contract.

SEC. 92. In every case of arrest the same shall be made

Officer making arrest to make return of same.

known to the captain or lieutenant upon duty in the precinct wherein such arrest was made, by the person making the same, and the captain or lieutenant, as soon as practicable thereafter, shall make written return thereof, according to the rules and regulations of the board of police, together with the names of the parties arrested, the offense, the place of arrest, and the place of detention. [74 v. 138, § 18.]

Arrested person—detention—trial.

SEC. 93. All persons arrested by the officers or members of the police force shall be detained, while in their custody, only in places provided for that purpose, and no trial or examination of any person arrested shall be held in the office of the superintendent of the police, or of the board, but the person so arrested shall be examined in the police court of such city, duly in session, before the police judge, or in the absence of the judge, before the person acting in such capacity. [74 v. 139, § 18.]

Clothing of prisoner—disposition of.

SEC 94. Necessary and usual articles of clothing or personal apparel upon the person or in possession of persons arrested and detained, shall not be taken or seized by the police, unless there is reason to suspect that the clothing has been stolen or obtained unlawfully. [74 v. 139, § 18.]

Detention of witnesses.

SEC. 95. The board of police shall provide suitable accommodations within the city for the detention of witnesses who are unable to furnish security for their appearance in criminal proceedings, and such accommodations shall be in apartments other than those employed for the confinement of persons charged with crime, fraud, or disorderly conduct; and it shall be the duty of the police judge, in committing witnesses, to have regard to the rules and regulations of the board of police in respect to their detention. [74 v. 139, § 18.

Bail by person arrested.

SEC. 96. Every person arrested by the police, charged with the violation of any city ordinance, may give special bail for his appearance to answer such charge; and the officer in charge of the precinct where such arrest is made is authorized to accept such bail, and examine such person under oath, touching his property qualifications, as to the sufficiency thereof, which oath such officer is authorized to administer; but no member of the police force shall become or furnish bail for any person arrested. [74 v. 139, § 18.]

Police a city charge.

SEC. 97. The necessary expenses for the maintenance of the police department hereby created shall be a city charge. [73 v. 55, § 19.]

Levy for support of police.

SEC. 98. The board shall prepare, and submit to the city auditor, on or before the first day of May in each year, an estimate of the cost and expense of providing for and maintaining the police department of the city within the current fiscal year, which estimate shall be in detail, and shall be laid by the city auditor before the city council for approval, and the council shall provide for the same in the general tax assessment; and the money, when collected, shall be paid into the city treasury, styled the "metropoli-

tan police fund," and shall be drawn therefrom for police purposes only, under the fiscal regulations established by this subdivision. [73 v. 55, § 20.]

Moneys paid from police fund to be certified.

SEC. 99. Moneys hereafter to be paid to any person out of the police fund shall be certified by the president, or acting president of the board, and the secretary, to the city auditor, who shall place the same in the next ordinance for the payment of claims; and the same shall be paid by the city treasurer, on the order of the city auditor, in the manner provided for the payment of other claims. [73 v. 55, § 21.]

Limitation of expenses.

SEC. 100. No expenses other than for the salaries and pay herein provided for shall be incurred by the board of police, except for rent, record books, stationery, printing, telegraphing, badges, clubs, furniture for necessary rooms and stations, advertising, fuel and lights, and food for prisoners, unless the same is expressly authorized, and provision therefor made, as a city charge, by the city council, or a committee thereof. [73 v. 55, § 22.]

Books and accounts of board to be open to inspection of council.

SEC. 101. The books and accounts kept by the board shall at all times be subject to the inspection of the city council, and the council may at any time require information respecting the same, the disclosure of which will not impair the usefulness and efficiency of the police department. [73 v. 55, § 22.]

Power of commissioners, etc., to administer oaths.

SEC. 102. Each commissioner of police, the superintendent of police, and the secretary of the board of police, may administer oaths to witnesses in any matter or proceeding herein authorized, and take depositions or affidavits which may be necessary under the rules and regulations of the board. [73 v. 55, § 23.]

Power to compel the attendance of witnesses.

SEC. 103. The provisions of law in respect to attachment of witnesses before the police court and justices of the peace, and the compulsory attendance of such witnesses, to appear and testify before them, are hereby made applicable to the board of police. [73 v. 55, § 23.]

Bond and oath of members of force.

SEC. 104. The board of police shall require, and make suitable provisions respecting, security to be entered into by the members of the police force, for the taking by such members of an oath of office, and the registry of the certificate of the same in a book, to be kept for that purpose by the board, which oath of office may be taken before any commissioner of police, or secretary of the board, who are hereby authorized to administer such oaths. [73 v. 56, § 24.]

Superintendent to make monthly reports.

SEC. 105. The superintendent of police shall make to the board monthly reports, in writing, of the state of the police force, with such statistics and suggestions as he may deem advisable for the enforcement of the police government and discipline; and the board shall, on or before the first Monday in April, in each year, report in writing the condition of the force, to the city council. [73 v. 56, § 25.]

Exemption from jury duty.

SEC. 106. No person holding office under this subdivision shall be subject to jury duty, or to arrest on civil process, while actually on duty. [73 v. 56, § 26.]

Commissioners may be removed.

SEC. 107. Either of the commissioners of police may at any time be removed by the city council upon good cause being shown, three-fourths of all the members concurring; and where charges are made against a commissioner, he shall have an opportunity to present evidence and be heard in his behalf. [73 v. 56, § 28.]

Member not to hold any other elective office.

SEC. 108. Any commissioner, or any member of the police force, who, during his term of office, accepts or holds any office elective by the people, shall be deemed thereby to have resigned and to have vacated his office as such commissioner or member. [73 v. 56, § 59.]

Council to raise money by taxation.

SEC. 109. The council of such city is hereby directed to order and cause to be collected and raised annually, by a tax upon the property, real and personal, subject to taxation according to law within the city, the sums of money aforesaid, annually estimated for the total expense of the metropolitan police authorized by this subdivision. [73 v. 56, § 30.]

Deputy superintendent may be appointed.

SEC. 110. In case at any time, or for any cause, the services of a deputy superintendent shall be required, the board of police may appoint any member of the police force to act in that capacity, at a salary not exceeding twenty-five hundred dollars per annum. [73 v. 57, § 31.]

Police not to enter drinking saloons, etc.

SEC. 111. No policeman or officer of police shall, while on duty, be at liberty to enter any drinking or gaming saloon, or other place where liquors are sold or drank on the premises, or house of prostitution, except for the purpose of discharging some duty of his office. [73 v. 57, § 32.]

Police officers may search house, etc., on suspicion.

SEC. 112. The superintendent, deputy superintendent, or a captain of police, having just cause to suspect that a felony is being, or is about to be, committed within any building, public or private, or on any wharf or enclosure, or on board of any ship, boat, or vessel within the city, may enter the same at any hour of the day or night, use necessary measures for the effectual prevention or detection of felonies, take into custody all persons suspected of being concerned in such felonies, and take charge of all property which he or they shall have cause to suspect has been stolen. [73 v. 57, § 34.]

Members of force to serve process.

SEC. 113. The members of the force shall serve or execute any criminal process issued by the police court of such city. [73 v. 57, § 34.]

Rules and regulations to remain in force until abolished.

SEC. 114. The rules and regulations for the government of the police in cities of the second grade of the first class, shall remain in force until altered or changed under this subdivision. [73 v. 57, § 35.]

SUBDIVISION III. IN CITIES OF THE THIRD GRADE OF THE FIRST CLASS.

Board of police commissioners in Toledo.

SEC. 115. In cities of the third grade of the first class, heretofore divided into the same number of police districts as there are wards in such cities, under the act of May 5, 1868 [65 v. 151], all powers and duties connected with and incident to the appointment, regulation, and government of a police force, shall be vested in a board, constitued as hereinafter specified, of which board the mayor shall, ex-officio, be a member. [65 v. 151, § 1; S. & S. 808.]

Police districts.

SEC. 116. The boundaries and numbers of the police districts shall be the same as the wards of such city, each ward constituting a police district. [65 v. 151, § 1; S. & S. 808.]

Present incumbents.

SEC. 117. The commissioners elected under said act, now in office, shall, unless in case of a vacancy, remain in office until the expiration of their respective terms. [65 v. 152, § 1; S. & S. 808.]

Qualifications of commissioners, etc.

SEC. 118. Each of such districts shall be represented by one commissioner, who shall be a resident of and have the qualifications of an elector, in the police district for which he is elected, and at each annual municipal election, members of the board shall be elected in such districts, where the terms of office of the members are about to expire. [65 v. 152, §§ 1, 4; S. & S. 809.]

Term of office of commissioners.

SEC. 119. The term of office of the commissioners shall be two years; and the city council shall have power to fill any vacancy that may occur in the police board, by appointing a member thereof, who shall hold his office until the next regular municipal election, when a member shall be elected from the proper police district, to fill such vacancy for the unexpired term; provided, that the city council shall appoint no person as a member of the police board, who is not a resident of and an elector in the police district for which he is appointed. [65 v. 152, §§ 1, 4; S. & S. 809.]

Vacancies.

President of board.

SEC. 120. The mayor shall act as president of the board, and a majority of the members shall constitute a quorum for the transaction of business; and before entering upon the duties of his office, each member shall take and subscribe the oath of office prescribed in division three of this title. [65 v. 152, § 5; S. & S. 809.]

Oath of members.

Organization of force.

SEC. 121. The police board may appoint one captain of police, who shall also be acting superintendent, whose salary shall be fixed by the police board, but shall not exceed twelve hundred dollars per annum; one sergeant of police for every ten patrolmen, whose salary shall not exceed nine hundred dollars per annum, and shall be fixed by the police board; such number of patrolmen as the police board may think expedient, but not exceeding one for each fifteen hundred inhabitants in the city, the salary to be fixed by the police board, but not to exceed eight hundred dollars per annum; detectives or secret police, not exceeding three in number,

whose salaries shall be fixed by the police board, but not to exceed nine hundred dollars per annum; and a secretary, and define his duties, who shall hold his office during the pleasure of the board, and receive such compensation as the board may determine, not exceeding nine hundred dollars per annum; all of which salaries, and all other salaries of members of the police department, shall be paid monthly; but the members of the police board shall receive no compensation for their services. [65 v. 152, § 6; S. & S. 809.]

Special patrolmen.

SEC. 122. The police board may, in case of emergency, appoint special patrolmen, but shall report to the city council, at its next meeting, the names and number of such special patrolmen, the occasion of their appointment as such, and the length of time for which such appointments are made; and unless the city council approve of such appointment, the same shall cease and terminate, and no payment shall be made to any person for services as special patrolmen, until the same be approved by council. [65 v. 152, § 6; S. & S. 809.]

Powers of board; suspension and removals.

SEC. 123. The police board shall have the control of the police force of the city, and make, publish, and enforce rules and regulations for the government of such force; have the custody and control of all public property, books, records, and equipments belonging to the police department; have power, at any time, for good cause shown, to suspend or remove any officer or member of the police force; and it may, at any time, by a vote of two thirds of the members of the board, suspend or remove any officer or member of the police force, without assigning any reason for such suspension or removal. [65 v. 153, § 7; S. & S. 810.]

Member of force receiving gift, etc., to be removed.

SEC. 124. Whenever it appears to the satisfaction of the board that any member or officer of the police force has received corruptly any sum of money, gift, fee, or reward, or has used his office for purposes of extortion or oppression, the board shall at once dismiss the person so offending from the force; and the salary of any officer or member of the police force shall cease from the time of his suspension or dismissal. [65 v. 153, § 7; S. & S. 810.]

Ineligibility to other offices.

SEC. 125. A member of the police board, or an officer or member of the police force, who holds or accepts any other office elective by the people, shall be deemed thereby to have resigned his office of member of the police board, or as member of the police force, and such vacancy so created shall be filled in the same manner as it is provided other vacancies shall be filled. [65 v. 153, § 8; S. & S. 910.]

Removals of members of board by council.

SEC. 126. The council shall have power to remove from office any member of the police board, three-fourths of such council concurring therein; but no member of the police board shall be removed from office except upon charges made in writing, and after opportunity given to be heard in his defense. [65 v. 153, § 8; S. & S. 910.]

Reports, statistics, etc.

SEC. 127. The acting superintendent of police shall make to the secretary of the board daily reports of such facts as come to his knowledge; the secretary shall make to the board monthly reports, in writing, of the state of the police force, with such statistics and suggestions as he may deem advisable for the enforcement of the police government and discipline; and the board of police shall, on or before the first Monday in March in each year, report in writing the condition of the police within the city to the council. [65 v. 154, § 11; S. & S. 810.]

Certain provisions in subdivision for Cleveland made applicable to Toledo.

SEC. 128. Sections ninety-eight, ninety-nine, one hundred, and one hundred and one, as they are contained in the second subdivision of this chapter, relating to cities of the second grade of the first class, are here made applicable to cities of the third grade of the first-class, as though they were here repeated. [65 v. 151, §§ 9, 10; S. & S. 810.]

SUBDIVISION IV. IN CITIES OF THE FIRST AND SECOND GRADES OF THE SECOND CLASS.

Police powers and duties vested in board, in Columbus and Dayton.

SEC. 129. In cities of the first and second grades of the second class all powers and duties with respect to the appointment, regulation, government, and control of the police, shall, as now, be vested in and exercised by a board consisting of the mayor, who shall be president, and four commissioners, who shall be electors and freeholders of the city, and a majority shall constitute a quorum. [69 v. 2 §§ 1, 3; 70 v. 84; 71 v. 63.]

Term of office.

SEC. 130. Each commissioner shall serve until the expiration of his regular term, unless a vacancy sooner occurs; and at the expiration of the regular term of a commissioner, a successor shall be elected, at the regular municipal election, for the term of four years; but if a vacancy, arising from any other cause than the expiration of the regular term, occurs in the office of any commissioner, it shall be filled by the remaining members of the board, who shall appoint some person of like qualifications to serve until the next annual municipal election, when a successor shall be elected for the unexpired term, if any remains. [69 v. 28, § 3.]

Vacancies.

Oath of office.

SEC. 131. The persons elected commissioners of police by virtue of this subdivision, shall, before exercising the duties thereof, take the oath of office prescribed in division three of this title. [69 v. 29, § 4.]

Appointment of superintendent and other officers.

SEC. 132. The board of police shall have power to appoint a superintendent of the police force, a captain of police, and an additional captain for each fifty patrolmen more than the first fifty that may be called into service, a sergeant of police for each twelve patrolmen, a roundsman of police for each police precinct; and also regular or compensated patrolmen, not exceeding one to each seven hundred and fifty inhabitants, as shown by the last federal census; but the number of patrolmen may be increased with the consent of the coun-

cil; and the board shall have the power, in cases of emergency, to appoint as many special patrolman as it may think proper, which appointment shall be reported to and be subject to the action of the council at its next meeting. [69 v. 29, § 5.]

Detectives.

SEC. 133. The board may, from the patrolmen, appoint detectives, not exceeding six in number, who shall act as secret police or detectives; and when from any cause a vacancy occurs in the number so first appointed, the board may appoint to the vacancy the patrolman which the record, required to be kept as hereinafter provided, shows to be most meritorious. [69 v. 29, § 5.]

Vacancies in force.

Secretary of board—his salary, duties, etc.

SEC. 134. The board shall appoint some suitable person, an elector of the city, to act as secretary, who shall receive such annual salary as may be fixed by the board, perform such duties as are hereinafter provided, and hold his office at the pleasure of the board. [65 v. 45, § 6; S. & S. 812.]

Rules and regulations.

SEC. 135. The qualifications, enumeration, and distribution of duties, mode of trial, and removal from office of each member of the police force, shall be particularly defined and prescribed by rules and regulations of the board of police; and no person shall be appointed to, or hold office in, the police force aforesaid who is not a citizen of the United States and a resident of the city; and no officer or patrolman shall be removed therefrom, except on written charges preferred against him to the board of police, and after an opportunity shall have been afforded him of being heard in his defense; but the board shall have power to suspend any member of the police department of the city, pending the hearing of the charges preferred against him. [69 v. 29, § 9.]

Vacancies in force—how filled.

SEC. 136. When any vacancy occurs in the office of captain of police, the same may be filled by an appointment from among the persons then in the force as sergeants of police; and a like vacancy in the office of sergeant of police may be filled by appointment from among the persons then in office as roundsmen of police; and a like vacancy in the office of roundsman of police may be filled by appointment from among the persons then in office as police patrolmen. [69 v. 29, § 9.]

Salaries.

SEC. 137. The superintendent shall receive a salary not exceeding twenty-five hundred dollars per annum; each captain shall receive a salary of not exceeding eighteen hundred dollars per annum; each sergeant, a salary not exceeding fourteen hundred dollars per annum; each detective, a salary not exceeding fourteen hundred dollars per annum; each roundsman, a salary not exceeding twelve hundred dollars per annum; the pay of each patrolman shall not exceed the sum of one thousand dollars per annum. [69 v. 29, § 9.]

SEC. 138. The pay, in all cases, shall be fixed by the board of police commissioners, and the salaries shall be paid

monthly to each person entitled thereto, but the police commissioners shall receive no compensation for their services. [69 v. 29, § 9.]

Fixed by board and how paid.

SEC. 139. No member of the board of police, or of the police force, shall receive or share in for his own benefit, under any pretense whatever, any present, fee, gift, or emolument, for police service, other than the regular salary and pay provided in this subdivision, except by the unanimous consent of the board of police; nor shall any such member share in or receive any fee, gift, or reward from any person who may become bail for any arrested, accused, or convicted person, or who may become surety for any such person on proceedings in error from the judgment or decision of any court or magistrate, or any fee, gift, or reward, in any case, from an attorney at law who prosecutes or defends a person arrested or prosecuted for an offense within the county in which such cities may be situated; nor shall any such member, either directly or indirectly, interest himself, or interfere, in any manner whatever, in the employment of an attorney to aid in the defense of a person arrested or accused; and for a violation of either of the foregoing provisions, the person so offending shall be immediately removed from the police force. [69 v. 29, § 9.]

Member not to receive fee, gift, or reward, etc.

SEC. 140. Any citizen of such city, with a view to the trial and suspension or removal from office of an officer or patrolman of the police force, may, on oath, in writing, prefer or make before the board, charges or complaint touching the character and competency, or affecting the acts, conduct, or omission, of such officer or patrolman, or for violation of the rules and regulations of the board. [63 v. 107, § 10; S. & S. 816]

Charges may be preferred against member of force by citizen.

SEC. 141. The board, after reasonable notice, in its discretion, to the person charged, shall proceed to the trial of the officer or policeman, on such charges or complaint, and shall have power to and shall issue subpœnas, attested in the name of the president of the board, to compel the attendance of witnesses, to administer oaths and affirmations, and generally shall, for the purposes of such trial, have and exercise the powers and duties of justices of the peace in civil cases, so far as the same are applicable, and may make an order of removal or suspension for some certain period. [63 v. 107, § 10; S. & S. 816.]

Judicial powers and duties of board.

SEC. 142. If, on such trial, the charges or complaint are sustained, the officer or policemen shall pay the cost of such proceedings, and the same may be deducted and withheld from his pay; and in case of his suspension, his pay shall also cease from the date of the charges and during the period of suspension. [63 v. 107, § 10; S. & S. 816]

Party suspended to pay costs, etc.

SEC. 143. In trials under the three preceding sections, the same costs shall be charged and taxed, as in trials before justices, and be collected on execution, to be issued by the

Costs collected on execution, etc.

police clerk of the city, on certificate of the same by the board, and order for execution, which costs, when collected, shall be paid to the clerk of the board for the benefit of those concerned; but the members of the board shall not tax or receive any fees for themselves. [63 v. 107, § 10; S. & S. 816.]

Member of force injured entitled to relief from fund.

SEC. 144 When a member of the police force, in performance and in consequence of the performance of official duty, becomes bodily disabled, his necessary expenses during such disability may be paid from the "police life and health insurance fund," provided for in section thirty-seven of the second subdivision of this chapter, which section is hereby made applicable to cities of the first and second grades of the second class, as if the same were here repeated, at the discretion of the board of police; and the board shall inquire into the circumstances, and if satisfied the charge upon the fund is correct, may, in writing, order the same to be paid by the draft of the trustees upon the fund, each trustee sub-cribing his name thereto; but the provisions of this section shall not apply to special patrolmen, the appointment of which is herein provided, at the request and expense of private persons. [63 v. 108, § 12; S. & S. 816.]

Police precincts and station-houses to be established.

SEC. 145 It is hereby made the duty of the board of police, where the same has not already been done, for more effectually distributing and enforcing its police government, and discipline, to divide the city into precincts without regard to ward boundaries; to assign captains of police and sergeants of police to each of the precincts, as they may deem for the best interest of the city; to establish, from time to time, a station or sub-station in each precinct or division for the accommodation of the police force on duty therein; to promulgate all regulations and orders through the superintendent of police; and the police force shall respect and obey the superintendent, subject to the rules and regulations and general orders of the board. [63 v. 108, § 14; S. & S. 817.]

Power of board to suppress nuisances, etc.

SEC. 146. The board of police in cities of the first grade of the second class shall be vested with all the powers, and perform all the duties connected with and incident to the suppression and removal of nuisances and infectious diseases, and the appointment of sanitary police, conferred upon boards of health, as provided in chapter one of the sixth division of this title. [74 v. 163.]

Arrests to be reported.

SEC. 147. Every case of arrest shall be made known to the captain or sergeant upon duty in the precincts wherein such arrest was made, by the person making the same, and it shall be the duty of the said captain or sergeant, as soon as practicable a ter such notice to make written return thereof, according to the rules and regulations of the board of police, together with the name of the party arrested, the offense, the place of arrest, and the place of detention. [63 v. 110, § 19; S. & S. 818.]

Police funds, how drawn from treasury.

SEC. 148. All moneys hereafter to be paid to any person out of the police fund shall be certified by the president or acting president of the board of police to the secretary, who shall draw his warrant on the treasurer therefor, stating therein the fund to which it is chargeable, and the person to whom payable; and such warrant shall be countersigned by the president, or, in his absence, by the acting president of the board of police. [63 v. 111, § 22; S. & S. 819.]

Reports by superintendent, secretary and board of police.

SEC. 149. The superintendent of police shall make to the secretary of the board daily reports of such facts as may come to his knowledge from the patrolmen, and the secretary shall make to the board monthly reports, in writing, of the state of the police force, with such statistics and suggestions as he may deem advisable for the enforcement of the police government and discipline; and the board of police shall, on or before the first Monday in April in each year, report in writing the condition of the police to the city council. [65 v. 48, § 26; S. & S. 814.]

Commissioners and police not to be candidates for or hold other office.

SEC. 150. Any one of said commissioners, or any member of the police force, who, during his term of office, accepts or holds any office elective by the people, or who, during his term of office, is publicly nominated for any office elective by the people, and does not, within ten days succeeding the same, publicly decline such nomination, shall be, in either case, deemed thereby to have resigned and to have vacated his office as such commissioner. [63 v. 113, § 30; S. & S. 820.]

Deputy superintendent.

SEC. 151. In case, at any time, or for any cause, the services of a deputy-superintendent shall be required, the board of police may appoint a member of the police force to act in that capacity. [63 v. 113, § 32; S. & S. 820.]

Powers of mayor to suspend officer of police force.

SEC 152. The mayor of such cities shall have power to suspend any officer of the police force and appoint a person to perform the duties of such suspended officer until the next regular meeting of the board of police commissioners, when his action shall be submitted to said board, and the board shall determine whether such suspension shall be permanent, and if the board so determine, it shall proceed to make an appointment to fill the vacancy. [65 v. 49, § 5; S. & S. 815.]

Certain provisions in subdivision for Cleveland made applicable to Columbus and Dayton.

SEC. 153. Sections sixty, sixty-two, sixty-three, sixty-four, sixty-five, sixty-six, seventy-two, eighty-one, eighty-two, eighty-three, eighty-four, eighty-five, eighty-six, eighty-seven, eighty-eight, eighty-nine, ninety-two, ninety-three, ninety-four, ninety-five, ninety-six, ninety-seven, ninety-eight, ninety-nine, one hundred and two, one hundred and three, one hundred and four, one hundred and six, one hundred and seven, one hundred and eleven, and one hundred and twelve, as they are contained in the second subdivision of this chapter, relating to cities of the second class, are hereby made applicable to cities of the first and second grades of the second class, as though said sections were in this subdivision repeated. [69 v. 29, 30, §§ 5, II, III; 63 v. 105, 108,

109, 110, 111, 112, 113, §§ 7, 15, 16, 17, 18, 19, 20, 22, 24, 25, 27, 31, 33, S. & S. 816–820; 65 v. 46–48, §§ 8, 21, 29, S. & S. 812–814.]

SUBDIVISION V. IN VILLAGES AND IN CITIES OF THE SECOND CLASS, EXCEPT THE FIRST AND SECOND GRADES.

Appointment of police force, except in Cincinnati, Cleveland, Toledo, Columbus and Dayton.

SEC. 154. The council of villages, and of cities of the second class, except those of the first and second grades, shall have power to provide by ordinance for the appointment by the mayor, with the consent of the council, of such number of police and night watchmen as they may think necessary for the good government of the corporation, who shall hold their office for one year unless sooner removed. [66 v. 184, § 205.]

Policemen's bonds.

SEC. 155. The night watchmen and police shall, before entering upon their duties, give bond, with good and sufficient surety to the satisfaction of the mayor, for the faithful performance of their duties. [66 v. 184, § 207.]

Officers of police, etc.

SEC. 156. The council shall also have power to provide by ordinance for the appointment of subordinate officers of the police and night watchmen, and to prescribe the number of such officers; and they may provide for the appointment of a reserved watch, in addition to the regular watch, which reserved watch shall consist of a suitable number of persons in each ward, when the corporation is divided into wards, to be called into duty, in whole or [in] part, in such manner and on such occasions as the council may prescribe, and by the mayor, or the officers of the police, under his direction, and in special cases, or in cases of emergency. [66 v. 184, § 208.]

Organization of police.

SEC. 157. The police and night watchmen shall be organized by the council, under the general superintendence of the mayor, marshal, chief of police, or other officers of the police, and the council shall prescribe their duties and define their powers, in such manner as will most effectually preserve the peace of the corporation, secure the inhabitants thereof from personal violence, and their property from fire and unlawful depredations. [66 v. 184, § 209.]

Powers and duties of policemen.

SEC. 158. The police and night watchmen and officers thereof, under the direction of the mayor, and in conformity with the ordinances of the corporation, shall suppress all riots, disturbances, and breaches of the peace; pursue and arrest any pers n fleeing from justice, in any part of the state; apprehend any and all persons in the act of committing an offense against the laws of the state or the ordinances of the corporation, and forthwith bring such person before the police court, or other competent authority, for examination; and at all times diligently and faithfully enforce all such laws, ordinances, and regulations for the preservation of good order and the public welfare, as the council may ordain, and for such purpose they shall have all the power of constables. [66 v. 184, § 210.]

Arrest upon view, etc.

SEC. 159. The members of the police force may, upon view, arrest any person who may be guilty of a breach of the ordinances of the corporation, or of a crime against the laws of the state, and may upon reasonable information, supported by affidavit, procure process for the arrest of any person who may be charged with a breach of any of the ordinances of the corporation. [66 v. 184, § 210.]

Suspension of policemen for cause.

SEC. 160. The mayor shall have power to suspend any policeman or night watchman for neglect of duty, misconduct, or other sufficient cause, and may appoint other persons to fill the temporary vacancy caused thereby; and all such suspensions, and the cause thereof, and all appointments, shall be by him reported to the council for their action at the next regular meeting thereafter. [66 v. 185, § 211; 66 v. 170, § 121.]

Compensation of policemen.

SEC. 161. The council shall fix the compensation or fees of the policemen and night watchmen, and the officers thereof, and they shall not demand or receive any other fee, perquisite, or reward. [66 v. 185, § 213.]

CHAPTER 6.

REFORMATORY INSTITUTIONS AND PRISONS.

SUBDIVISION I. *Houses of refuge and correction established since May 7, 1869, or to be hereafter established.*

SUBDIVISION II. *Houses of refuge established previous to May 7, 1869.*

SUBDIVISION III. *Corporation prison and station-houses.*

SUBDIVISION IV. *Work-houses.*

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SUBDIVISION I. HOUSES OF REFUGE AND CORRECTION ESTABLISHED SINCE MAY 7, 1869, OR THAT MAY BE HEREAFTER ESTABLISHED.

General authority.

SECTION 1. The council of any city or village shall have power to establish, erect, and maintain houses of refuge and correction, and for such purpose may acquire, hold, and possess lands outside of the limits of the corporation as well as within the limits. [66 v. 187, § 219; 68 v. 90.]

Directors.

SEC. 2. The management of houses of refuge and correction, and the management and care of the inmates thereof, the erection and enlargement of any building as a house of refuge and correction, or any addition thereto, repairs, and furnishing thereof, erection of any work-shops and furnish-

ing the same with the necessary machinery and tools, and the cultivation and improvement of any grounds therewith connected, shall be vested in a board of five directors, to be called the "Board of Directors of the House of Refuge and Correction." [66 v. 187, § 220.]

Their qualification, appointment, term of office, etc.

SEC. 3. The directors shall be freehold electors of the corporation; appointed by the mayor, with the consent of the council; hold their offices for the term of five years, except that at the first appointment, one director shall be chosen for one year, one for two years, one for three years, one for four years, and one for five years; annually thereafter one director shall be appointed; a majority of the directors shall constitute a quorum; and they shall not receive any compensation for their services. [66 v. 187, § 221.]

President, clerk, and other officers.

SEC. 4. The board shall elect, annually, at the first regular meeting in May, one of their members as president; and at the same meeting appoint a secretary and clerk, who shall make a complete record of all its proceedings, and such other officers as may be necessary, and fix the compensation for their services, which compensation shall be subject to the approval of the council. [67 v. 75, § 222.]

Contract.

SEC. 5. Contracts may be made by or on behalf of the board; but it shall be essential to the validity of every such contract that the same has been assented to at a regular meeting, by a majority of all the members, and a minute thereof entered on the journal of its proceedings. [66 v. 187, § 223.]

Erection of buildings, etc.

SEC. 6. In the erection of a building as a house of refuge and correction, or any addition thereto or enlargement thereof, in the repair and furnishing of the same, and in the erection of any shop and providing the same with machinery and tools, the board shall have the same powers, be governed by the same regulations, and perform the same duties, so far as applicable, as are prescribed for the government of trustees of hospitals in division six of this title; and the powers of the council in relation to the erection and repair of such buildings, and the conduct of the board, shall be the same, so far as applicable, as prescribed in relation to the erection and repair of buildings for hospital purposes. [66 v. 187, § 224.]

Separate male and female apartments.

SEC. 7. In the erection of any such buildings, and any addition thereto, or any enlargement thereof, the board may so construct the same that the male and female inmates shall be provided with separate apartments and accommodations; and the grounds therewith connected shall be so separated, by partition walls or fences, that the males and females may be enabled to occupy separate portions thereof. [66 v. 188, § 225.]

Also separate buildings.

SEC. 8. Whenever in the opinion of the board it is advisable to provide separate building for the accommodation of males and females, such buildings shall be erected at

least one fourth of a mile apart, and the grounds around each shall be inclosed by suitable walls or fences. [66 v. 188, § 226.]

Superintendent and other officers.

SEC. 9. The board shall have power to appoint a superintendent, deputy superintendent, and such subordinate officers, guards and employés as may be necessary, fix their compensation and prescribe their duties, and to make all such regulations for their management and government as it may deem expedient. [66 v. 188, § 227.]

Rules and regulations.

SEC. 10. The board shall have power to make, establish, and enforce rules and regulations for its own government, and the government and control of the institution, its officers and inmates, and make contracts for supplies, and the labor of the inmates. [66 v. 188, § 228.]

Appropriations, etc., to be approved.

SEC. 11. No appropriation of money for any purpose other than the ordinary and necessary expenses and repairs of the institution, and no by-law, rule, or regulation which the board may establish, shall be of any validity until approved by the council. [67 v. 75, § 229.]

How books kept.

SEC. 12. The books of the institution shall be so kept as to clearly exhibit the time, state, and condition of the inmates, the number received and discharged, and for what cause committed, the number employed as servants or in cultivating the premises, the number employed in each branch of industry carried on, and the receipts from and expenditures for and on account of each department of business, or for the improvement of the premises. [66 v. 188, § 230.]

Quarterly statement to council.

SEC. 13. The board shall cause a quarterly statement to be made, specifying minutely all receipts and expenditures, from whom and for what purpose received, and to whom and for what purpose paid, with proper vouchers for each item, and submit such statement, properly certified, to the council, for examination and approval. [66 v. 188, § 231.]

Accounts to be balanced and reported.

SEC. 14. The accounts of the institution shall be annually closed and balanced on the first Monday of January in each year, and full reports of the preceeding year shall then be made and submitted to the council, which shall be published in the official paper of the corporation, or in such other form as council may direct; and the council may require such other reports and exhibits of the condition and management of such institution as may seem proper. [66 v. 188, § 232.]

Superintendent to have control.

SEC. 15. The superintendent of the institution shall have the control and management of its affairs, subject to the laws and ordinances of the corporation, and the rules and regulations adopted by the board for its government; and it shall be his duty to obey all written orders and instructions of the board not inconsistent with the laws, rules and regulations relating to the government of the institution. [66 v. 188, § 233.]

His responsibility.

SEC. 16. The superintendent shall be responsible for the manner in which the institution is managed and conducted, shall reside at the same, devote his time and attention to the proper business thereof, and visit and examine into the condition of every department thereof, and of each person confined therein, daily, or as often as good order or necessity may require, and he shall exercise a general supervision and direction in regard to all matters of discipline, police regulation, and business of the institution. [66 v. 189, § 234.]

Deputy superintendent.

SEC. 17. In the absence or inability of the superintendent, the deputy superintendent of the institution shall, so far as relates to the discipline thereof, perform the duties of the superintendent. [66 v. 189, § 235.]

Notice of completion of building.

SEC. 18. When a house of refuge and correction has been erected, as provided herein, and is so far complete as to insure the safe confinement and employment of the persons intended to be confined therein, the board shall cause notice of that fact to be published in some newspaper of general circulation in the corporation and county. [66 v. 189, § 236.]

Removal of officers.

SEC. 19. The board may, for misconduct or willful neglect of duty, and upon sufficient proof thereof, remove any officer or employé of the institution, except the superintendent thereof, who shall be removed for the causes and in the manner provided for the removal of city officers; and any employé of the superintendent may be discharged at his discretion; but no officer shall be removed by the board until he has had an opportunity to be heard in his defense. [66 v. 189, § 237.]

When infants received.

SEC. 20. The board may, at its discretion, receive into such institution infants under the age of sixteen years, committed to their custody in either of the following modes, to wit:

1. Infants committed by the mayor of the corporation, or any judge or justice of the peace of the county, on complaint and due proof by the parent, guardian, or next friend of such infant, that, by reason of incorrigible or vicious conduct, such infant has rendered his control beyond the power of such parent, guardian, or next friend, and made it manifestly requisite that, from regard to the future welfare of such infant, and for the protection of society, he should be placed under the guardianship of the board of directors of such house of refuge and correction.

2. Infants committed by the authorities aforesaid, where complaint and due proof have been made that such infant is a proper subject for the guardianship of the directors of such institution, in consequence of vagrancy, or of incorrigible or vicious conduct, and that from the moral depravity of the parent, guardian, or next friend, in whose custody such infant may be, or other cause, such parent, guardian, or next friend is incapable or unwilling to exercise the proper care and discipline over such incorrigible or vicious infant.

3. Infants who are without a suitable home and adequate means of obtaining an honest living, or who are in danger of being brought up to lead an idle or immoral life, may be committed to the guardianship of the directors of such institution, by the trustees of any township within the county in which such institution is situated, or by the mother, when the father is dead, or has abandoned his family, or does not provide for their support, or is an habitual drunkard. [66 v. 189, § 238.]

Infants may be confined after conviction.

SEC. 21. An infant under the age of sixteen years, convicted of a misdemeanor, or an offense punishable by imprisonment under an ordinance of the city, or who has been ordered to be committed as prescribed in the last section, may be confined in such house of refuge and correction, under such rules and regulations as the directors may prescribe; and the directors shall receive and take charge of any children committed to their custody by any court or officer, under a law of the state. [67 v. 75, § 239.]

When infant may be put to hard labor.

SEC. 22. A minor, over the age of sixteen years, convicted of a violation of any ordinance, and liable to be punished therefor by imprisonment, or who may be liable to imprisonment for neglect or refusal to pay a fine imposed for the violation of an ordinance, may, in lieu thereof, be committed to the house of refuge and correction, and put to hard labor, in such manner as may be prescribed by ordinance of the council. [66 v. 190, § 240.]

Confinement of infants until of age.

SEC. 23. Any infant, under the age of sixteen years, who may be liable to confinement in the jail in any county in which a house of refuge and correction is situated, or in the penitentiary of the state from such county, or at the reform farm, may, at the discretion of the court, or magistrate, giving sentence, be placed in such institution until of legal age, under the exclusive control and guardianship of the directors thereof. [66 v. 190, § 241.]

Commitment on recommendation of grand jury.

SEC. 24. If accusation of the commission of a crime is made against an infant under the age of sixteen years, before the grand jury of the county in which such house of refuge and correction is situated, and the charge appears to be supported by evidence sufficient to put the accused upon trial, the grand jury may, in its discretion, instead of finding an indictment against the accused, return to the court that it appears to them that the accused is a suitable person to be committed to the guardianship of the directors of the house of refuge and correction, and the court shall thereupon, on notice to the minor, and an opportunity to be heard, but without a jury, order such commitment. [66 v. 190, § 242.]

Commitment by court in certain cases.

SEC. 25. If an infant, under the age of sixteen years, be arraigned for trial in a court having criminal jurisdiction in a county in which a house of refuge and correction is situated, on a charge of a violation of any criminal law of this state, or ordinance of the corporation, the judge may, with

the consent of the accused, arrest, at any stage of the cause, further proceedings upon the part of the prosecution, and commit the accused to the guardianship of the directors of such institution. [66 v. 190, § 243.]

Infants entitled to private examination and trial.

SEC. 26. Infants under the age of sixteen years who are accused of an offense punishable by imprisonment in a county in which a house of refuge and correction is situated, shall be entitled to a private examination and trial, to which only the parties shall be admitted, unless one of the parents, the guardian, or other legal representative demands a public trial, in which case all proceedings shall be in the usual form. [66 v. 191, § 244.]

Infants placed in refuge instead of jail.

SEC. 27. An infant under the age of sixteen years who is committed for trial, or as a witness, in a county in which a house of refuge and correction is situated, shall be placed in such institution subject to the order of the court making such commitment, and in no case in the county jail. [66 v. 191, § 245.]

Disposition when refuge full.

SEC. 28. If at any time a house of refuge and correction have as many infants under its charge as can be conveniently accommodated therein, or as many as the funds of such institution are adequate to maintain, the board shall not be required to receive other infants, but shall order their chief officer to return that fact to any magistrate, court or person authorized to commit, who shall have sent an infant to such institution; and thereupon the case of such infant shall be disposed of as if this chapter had not been enacted, and as if no proceedings had taken place under it. [66 v. 191, § 246.]

Statement of age, residence, cause, etc, to be furnished.

SEC. 29. In all cases where an infant is committed to the instruction and discipline of a house of refuge and correction, under the guardianship of the directors thereof, the court or judge ordering such commitment shall, at the same time, furnish to the directors or officers of such institution a true statement, in writing, of the age of such infant, and the reason for such commitment; and until such statement is furnished, the directors or officers aforesaid may decline to receive such infant. [66 v. 191, § 247.]

What record of commitment shall contain.

SEC. 30. In all cases where the commitment is ordered by an official person whose proceedings are usually evidenced by a record, or where the occasion of the commitment is a criminal charge against the infant, no other record shall be made, unless demanded by the infant, or his parents, or guardian, than that, in substance, such infant (naming him), who, on a day therein named, was of the age of —— years, having been brought before such court or officer, and the court or officer having ascertained by the testimony of the witnesses therein named, that such infant was a suitable person to be committed to the discipline and instruction of the house of refuge and correction, under the guardianship of the directors thereof, such infant was so committed, and delivered to the charge of such directors. [66 v. 191, § 248.]

Duration of commitment; discharge, habeas corpus.

SEC. 31. No commitment of an infant to a house of refuge and correction shall be for a shorter period than till such infant shall be reformed, or attain the age of majority, except in case of infants committed to await their trial, or as witnesses, and except in such cases as the board may, by its general rules, provide; but any infant, by whomsoever or for whatever cause committed, may at any time be discharged upon the order of the board, duly entered upon its minutes, or upon habeas corpus, if the court or judge, upon hearing, decide that neither the interest of the minor nor of the public will be endangered by such discharge. [66 v. 191, § 249.]

How minors employed.

SEC. 32. The board shall have power to place infants committed to its care, during their minority, at such employment for account of the institution or otherwise, and cause them to be instructed in such branches of useful knowledge, as may be suited to their years and capacities. [66 v. 192, § 250.]

Board may bind them as apprentices.

SEC. 33. The board shall have power, at discretion, to bind out the said infants committed to its care, with their consent, as apprentices during their minority, to such persons and at such places, to learn such proper trades and employments as in its judgment will be most conducive to their reformation and amendment, and as will tend to the future benefit and advantage of such infants. [66 v. 192, § 251.]

Committee on indentures.

SEC. 34. The board shall, for such purpose, have power to appoint a committee of one or more of its number, with power to execute and deliver, on behalf of the board, indentures of apprenticeship for any infant in such institution whom it may deem a proper person for an apprenticeship; such indentures shall have the like force and effect as other indentures of apprenticeship under the laws of Ohio; the indentures shall be filed and kept in the office of such institution, and it shall not be necessary to file or record them in any other place or office. [66 v. 192, § 252.]

When indenture to be canceled.

SEC. 35. In case an infant so apprenticed prove untrustworthy and unreformed, the board may, at its discretion, permit such infant to be returned to such house of refuge and correction, to be held in the same manner as before such apprenticeship, and may thereupon order the indentures for such infant to be canceled. [66 v. 192, § 253.]

When indentured infant returned to institution.

SEC. 36. If, in the opinion of the board, an infant apprenticed by it has an unsuitable home, or if the person to whom such infant is indentured becomes unfit or incapable to properly raise or take care of such infant, the directors may, at their discretion, return such infant to the institution from which it was indentured. [66 v. 192, § 254.]

Arrest of fugitives from refuge or apprenticeship.

SEC. 37. A fugitive from a house of refuge and correction, or a fugitive from apprenticeship under indentures executed as above provided, may be arrested and returned to such institution by a sheriff or constable of any county in this state, or police officer of the corporation, or officer of such in-

stitution, on the written order of two directors of such institution, directed to such officer, and may be delivered to the custody of such officer of the house of refuge and correction as the directors may name. [66 v. 192, § 255.]

Stubborn infants—how dealt with.

SEC. 38. When an infant is convicted of an offense against the laws of this state, punishable with imprisonment in the penitentiary, or in the jail of the county where such house of refuge and correction is situate, and, under existing laws, is sent to the house of refuge and correction, instead of the penitentiary or jail, and refuses to submit to the rules of the institution, and proves to be stubborn and irreclaimable, in the opinion of a majority of the board, such infant may, by its order, be delivered into the custody of the sheriff of the county, with a written statement of the cause of commitment, and of the conduct and character of such infant, as exhibited in such institution, which statement shall be prepared and signed by the superintendent. [66 v. 193, § 256.]

Sheriff to notify prosecuting attorney in such case.

SEC. 39. It shall be the duty of the sheriff to receive such infant into his custody, and file the statement in the office of the clerk of the court of common pleas, or in the office of the clerk of the court in which such infant was tried, and to notify the prosecuting attorney of the county thereof. [66 v. 193, § 257.]

Final disposition of stubborn infants.

SEC. 40. The prosecuting attorney on receiving such notice shall cause such infant to be brought before the court of common pleas, or before the court in which such infant was tried, to receive the sentence which the court deems just, according to the law, for the offense of which such infant was convicted as aforesaid. [66. v. 193, § 258.]

How expenses shall be paid.

SEC. 41. The expense of maintaining infants committed to a house of refuge and correction, by a court or magistrate of the county in which such institution is situated, or by the police or other court of the corporation, for offenses against a law of the state, or for trial, or as a witness, shall be paid by the county; and the expense of infants committed by township trustees shall be paid by the township, and of those committed by parents and guardians shall be paid by them, except in cases where the board otherwise determine; all which expense shall be ascertained and fixed by the board. [66 v. 193, § 259.]

Deficiency, how raised.

SEC. 42. The expense of maintaining and administering the affairs of houses of refuge and correction, above the receipts thereof, shall be audited and paid, from time to time, by the council of the corporation; and a tax for such expense shall be levied and collected as a part of the ordinary expenses of the corporation. [66 v. 193, § 260.]

What return to writ of habeas corpus shall contain.

SEC. 43. It shall be a sufficient return to a writ of habeas corpus, directed to any person or officer, inquiring into the cause or detention of an infant committed to a house of refuge and correction, that the infant named in the writ was, on a day therein named, committed to the guardianship

of the directors of the house of refuge and correction, in the city or village of —— (as the case may be), by the person or officer who executed the commitment, naming him, until such infant should arrive at legal age, and that that period has not arrived; but the court, nevertheless, or a judge thereof, shall have the power on habeas corpus specified in section thirty-one of this chapter. [66 v. 193, § 261.]

Commitment —how far examinable.

SEC. 44. Where a commitment has, in fact, been executed by a person authorized by this chapter to execute it, the existence of the circumstances justifying its execution shall not be otherwise examinable than in an action against the directors of such institution, as provided in this chapter; but the court or judge on habeas corpus shall have the power mentioned in said section thirty-one. [66 v. 193, § 262.]

Aggrieved party may apply to the board.

SEC. 45. If a parent, guardian, master to whom an infant has been apprenticed, a person occupying the position of parent, protector, or guardian, in fact, or a relative by blood or marriage, not further remote than first cousin to such infant, feels aggrieved by the commitment of an infant to the directors of a house of refuge and correction, by a person authorized by this chapter to commit such infant, he may make a written application to the board, at such time as the directors, by rule or resolution, provide for hearing applications, not later than the next regular meeting of the board, to have the infant delivered to him; which application shall state the ground of the applicants' claim to the custody of such infant, and the reason for claiming such custody, [66 v. 194, § 263.]

Decision of application.

SEC. 46. Within ten days after hearing such application, the directors shall decide; and if they be of opinion that the welfare of such infant will be promoted by granting the application, they shall make an order to that effect; otherwise they shall decline the application. [66 v. 194, § 264.]

Applicant may bring action.

SEC. 47. The applicant may, if the application be declined, upon first giving security for the payment of costs, commence an action against such directors in the court of common pleas or superior court of the county in which the house is situated, for the recovery of the infant, or his liberation; which action shall be conducted in all respects as actions under the code of civil procedure, except the case shall have precedence of all others in the time of trial. [66 v. 194, § 265.]

Cost of such action.

SEC. 48. The cost of such action shall be paid by the applicant, or out of the county treasury, unless the court certify in the journal entry of the judgment, that the refusal of the directors to grant the application of the plaintiff was plainly unreasonable, or the original commitment manifestly improper and unnecessary, in which case the costs shall be taxed against the party in fault, on notice to him. [66 v. 194, § 266.]

SEC. 49. The directors of a house of refuge and correction shall have power with the approval of council to negotiate

or the sale of any real estate owned, or held by donation or purchase, for the use and benefit of such house of refuge and correction, when such real estate is not necessary for the accommodation of the inmates of such institution. [66 v. 194, § 267.]

When real estate may be sold.

SEC. 50. The council shall thereupon order the execution of a deed or deeds for such real estate, to the parties named by the directors, in conformity to the terms agreed upon; and the proceeds of such sale shall be placed in the corporation treasury, to the credit of the house of refuge and correction fund, and be held and disbursed as other funds are held and disbursed, for such institution. [66 v. 194, § 268.]

Deed, and proceeds of sale.

SEC. 51. Actions may be brought by and against the directors of the house of refuge and correction, before any court of competent jurisdiction; and process may be served by leaving a copy of the writ with a director, or at the office of such institution, with any officer thereof. [66 v. 194, § 269.]

Action against directors—where brought; service.

SEC. 52. Houses of refuge and correction heretofore established and governed under the provisions of an act entitled "an act to authorize the establishment of houses of refuge," passed April 16, 1857, 54 v. 163, S. & C., 687, shall be governed by the provisions of subdivision two of this chapter, and such provisions of this subdivision as are made applicable to that subdivision. [66 v. 194, § 270.]

Act not to affect refuges heretofore established, except, etc.

ION II. HOUSES OF REFUGE ESTABLISHED PREVIOUS TO MAY 7, 1869.

SEC. 53. Houses of refuge and correction heretofore established and governed under the provisions of the act of April 16, 1857 (54 v. 163), entitled "an act to authorize the establishment of houses of refuge," shall continue to be governed by the same provisions, as here modified, which provisions so modified are as in this subdivision set forth.

Houses of refuge under act of 1857.

SEC. 54. The council of any city which has such house of refuge, established prior to May 7, 1869, may levy a tax for the purchase of additional real estate and the erection of any other or additional buildings that may be deemed necessary; and whenever it is deemed advisable to provide buildings for the accommodation of both males and females, such buildings shall be at least one-fourth of a mile apart, and be managed by separate boards of directors; but the council shall not purchase such lands nor erect such buildings until fifty individuals subscribe toward the building and support of such house of refuge, either twenty-five dollars for life membership, or five dollars annually for seven years; and such annual subscribers who have paid up their subscriptions shall be entitled to life membership; similar subscriptions to aid in the maintenance and support of such house of refuge may, from time to time, be received by the directors, who

Tax to purchase real estate, etc.

Males and females kept separate.

Subscriptions.

Vested rights under former laws.

shall have power to collect any subscriptions heretofore made for the use and benefit of any such institution; and this subdivision shall not disturb any rights and privileges enjoyed by subscribers to a house of refuge under any former act. [54 v. 163, § 1; S. & C. 687.]

Board of directors; their appointment, etc.

SEC. 55. Any house of refuge already established, under the provisions of this subdivision, shall be under the direction and control of a board of directors, consisting of nine members, three of whom shall be appointed by the city council, two by the court of common pleas, and two by the superior court of the county in which such refuge may be situated; and in counties in which there is no superior court, the city council shall appoint five directors, and the seven members so appointed shall, by advertisement for six days in two daily papers, or by notice through the post office of the city where such house of refuge may be situated, call a meeting of the subscribers to such house of refuge, for the appointment of two directors; and in case the subscribers fail to appoint, the directors already appointed shall, after taking an oath of office before the mayor, organize, and appoint two directors. [54 v. 163, § 2; S. & C. 688.]

Term of office.

Vacancies.

SEC. 56. The directors shall hold their office for three years, and until their successors are chosen and qualified; vacancies which may happen in the board by death, resignation, or otherwise, shall be filled by the remaining members; and in case the city or the subscribers fail to fill any place vacated by the termination of any appointment, within one month thereafter, such vacancy shall be filled by the board. [54 v. 163, § 2; S. & C. 688.]

Incumbents not affected.

SEC. 57. Directors of a house of refuge now in office shall continue in office till the expiration of their respective appointments, and until their successors are chosen and qualified. [54 v. 163, § 2; S. & C. 688.]

Powers and duties of board.

SEC. 58. A majority of the board shall be a quorum; a majority of the whole number of directors shall have power to suspend or remove from office any member or officer of the board for misconduct; the board may appoint a president and treasurer, and employ such clerks and officers as are needful, and fix their salaries, make contracts for supplies, improvements, and labor of inmates, and make, establish, and enforce rules and regulations for the government and control of such house of refuge, its officers and inmates, and the government of the board; but such rules and regulations shall not be in force until approved by the court of common pleas of the county, the mayor of the city, and, if there be a superior court in the county, by the superior court; which approval of the mayor shall be evidenced by his official signature, and that of the courts by an entry on their journal; the board shall make yearly reports to the legislature and the city council of the fiscal affairs, the management, condition, and influence of such house of refuge, with statistics of the age, nativity, cause of commitment, progress, and disposal of all

infants under their care; and severally they may do whatever the interest of such house of refuge may require, provided that it conflicts with no existing law of the state, or ordinance of the city in which such house may be situated. [54 v. 163, § 3; S. & C. 688.]

City liable for debts.

Exemption from taxation.

As to treasurer's fees.

Certain sections of last subdivision made applicable to this.

SEC. 59. The city alone shall be liable for the debts of such house of refuge; but no tax shall ever be levied on any property owned or held for the use and benefit of such institution, and the city treasurer shall not be entitled to any extra fee or salary for the keeping and disbursement of any funds for a house of refuge. [54 v. 163, § 4; S. & C. 689.]

SEC. 60. Sections five, six, and twenty, sections twenty-three to thirty-six, inclusive, section forty-one, and sections forty-three to fifty-one, inclusive, as they are contained in subdivision one of this chapter, are here made applicable to this subdivision, as though they were here repeated.

SUBDIVISION III. CORPORATION PRISON AND STATION-HOUSES.

Powers of council.

Who to have control of such prisons, etc.

SEC. 61. The council of any city or village shall have power to erect, establish, and maintain a prison, and such number of station-houses as may be necessary; and such prison and station-houses shall be under the control of the marshal or chief of police, under such rules and regulations as the council may prescribe, except as otherwise provided in this division. [66 v. 185, § 215.]

Sustenance, etc., for prisoners.

SEC. 62. The marshal, chief of police, or superintendent, as the case may be, shall provide all persons confined in such prison or station-houses with necessary food during such confinement, and see that such places of confinement are kept clean and made comfortable for the inmates thereof. [66 v. 186, § 216.]

Provision therefor by council.

SEC. 63. The council shall provide, by ordinance, for sustaining all persons sentenced to or confined in such prison or station-houses, at the expense of the corporation; and on the presentation of bills for food, sustenance, and necessary supplies, to the proper officer, certified by such person as the council may designate, such officer shall audit the same, under such rules and regulations as the council may prescribe, and draw his order on the treasurer of the corporation in favor of the officer presenting such bill; but the amount shall not exceed forty cents a day for any person so confined. [66 v. 186, § 217.]

Disposition of prisoners where there is no work-house.

SEC 64. In corporations in which there is no work-house, the council may, by ordinance, provide for the keeping of persons convicted and sentenced to hard labor, during the term of their imprisonment, at such place or places within the corporation as the council may determine. [66 v. 186, § 218.]

SUBDIVISION IV. WORK-HOUSES.

Power to establish work-house.

SEC. 65. The council of any city or village shall have power to establish, erect, and maintain a work-house; and such work-hou e, and any work-house heretofore established, shall be governed by the provisions of this chapter; provided, that any city which has erected a "house of correction," as provided by an act of the general assembly of the state of Ohio, passed April 13, 1867 (64 v. 130), may organize and govern the same under the provisions of this chapter, as the city council may determine; and the council of any city or village may acquire, hold, and possess lands without the limits of the corporation, for the purpose of establishing and maintaining thereon such work-house. [67 v. 75, § 271; 68 v 90.]

Direction and management thereof.

SEC. 66. The direction, management, and control of any work-house, and the maintenance and care of the convicts therein, shall be vested in a board of five directors, who shall be called "the board of work-house directors;" and such directors shall be freehold electors of the corporation, and serve without compensation. [66 v. 195, § 272.]

Appointment and term of office of directors.

SEC. 67. The directors shall be appointed by the mayor, with the approval of the council, and shall hold their office for five years, except at the first appointment one shall be appointed for one year, one for two years, one for three years, one for four years, and one for five years; and thereafter one shall be appointed annually. [66 v. 195, § 273.]

Powers and duties of the board.

SEC. 68. The board shall have the same powers, perform the same duties, and be governed by the same regulations, so far as applicable, in the maintenance, erection, or enlargement of any buildings or shops for work-house purposes, or in making any addition thereto, or in the improvement or management of the grounds therewith connected, and in the management of the affairs thereof, and care of the convicts therein, as are conferred upon and required of the board of directors of houses of refuge and correction, as provided in subdivision one of this chapter; and the powers and duties of the council in respect to such board shall be the same, so far as applicable, as are provided in said subdivision. [66 v. 195, § 274.]

Who shall be sentenced to work-house.

SEC. 69. When a person over sixteen years of age is convicted of an offense, under the law of the state or an ordinance of a municipal corporation, and the tribunal before which the conviction is had is directed by law to commit the offender to the county jail or corporation prison, the court, mayor, or justice of the peace, as the case may be, shall sentence the offender to the work-house, if there is such house in the county; provided, that when a commitment is made from a city, village, or township in the county, other than in the municipality containing such work-house, the council of such city or village, or the trustees of such township, shall transmit with the mittimus a sum of money equal

to forty cents per day for the time of such commitment, to be placed in the hands of the superintendent of such work-house, for the care and maintenance of such prisoner. [73 v. 211, § 275.]

Labor of convicts.

SEC. 70. A person so sentenced shall be received into such work-house, and shall be there kept and confined at labor, and shall be subject to the rules, regulations, and discipline thereof, until the expiration of his sentence, when such party shall be discharged; but no person committed or held in default of the payment of a fine, penalty, or costs of any prosecution shall be released under the laws providing for the relief of insolvent debtors. [66 v. 195, § 276.]

Prompt commitment; fees.

SEC. 71. The officer having the execution of the final sentence of any court, magistrate, or mayor, shall cause the convict to be conveyed to the work-house as soon as practicable after the sentence is pronounced; and all officers shall be paid the fees therefor allowed by law for similar services in other cases—such fees to be paid, when the sentence is by the court, out of the county treasury, and when by the magistrate, out of the township treasury. [66 v. 196, § 277.]

Discharge, and record thereof.

SEC. 72. The board shall have power to discharge, for good and sufficient cause, a person committed to such work-house; but a record of all such discharges shall be kept and reported to the council, in the annual report of the board, with a brief statement of the reasons therefor. [66 v. 196, § 278.]

Punishment for escape or attempt to escape.

SEC. 73. A person lawfully committed to a work-house who escapes therefrom, or breaks the same with intent to escape therefrom, or who attempts by force, or in any other way, to escape therefrom, whether such escape be effected or not, shall, upon conviction before the police court, court of common pleas for the proper county, or the authority by which such person was originally committed, be punished by confinement in such work-house for a term not exceeding double the term for which such person was so sentenced; and unless the former sentence has expired, the term shall commence from and after the expiration of the former sentence. [66 v. 196, § 279.]

Excess of expenses—how raised.

SEC. 74. The expense of maintaining and administering the affairs of work-houses, over the receipts for the labor of persons confined therein, shall be audited and paid, from time to time, by the council of the corporation; and a tax for such expense shall be levied and collected as part of the ordinary expenses of the corporation. [66 v. 196, § 280.]

Officers to have police powers.

SEC. 75. The superintendent, assistant superintendent, and guards of the work-house shall have such powers of policemen as may be necessary for the proper performance of the duties of their position. [66 v. 196, § 281.]

Infants received where there is no house of refuge.

SEC. 76. The council of any corporation owning a work-house, but not owning a house of refuge and correction, shall have power to provide for receiving infants into such work-house, in the manner prescribed in subdivision one of this

chapter; and the board of directors of such work-house shall have power to make such rules and regulations in regard to the admission of infants, and their management, as are provided in that subdivision. [66 v. 196, § 282.]

Commissioners may unite with city in erecting work-house.

SEC. 77. The commissioners of any county may unite with any city, located in such county, in the erection, management, and maintenance of a work-house for the joint use of such county and city; and the commissioners are authorized to levy and collect the necessary funds therefor from the taxable property of the county; provided, that the commissioners shall not collect and expend a greater amount than shall be collected and expended by such city for the same purpose; that the work-house shall be managed and controlled in all respects as provided in this chapter; and provided further, that not more than ten thousand dollars shall be levied or appropriated by the commissioners for the purpose, unless the amount be approved by a majority of the voters of the county, exclusive of the city, voting at some general election. [68 v. 114.]

CHAPTER 7.

VAGRANTS AND DISSOLUTE PERSONS.

SECTION
1. Power of council as to public peace, etc.
2. Punishment for breaches of the peace, etc.
3. Imprisonment therefor.
4. Regulation of labor.
5. Hospitals, etc., for diseased prisoners.

Power of council as to public peace, etc.

SECTION 1. The council of a city or village shall have power to provide for the punishment of persons disturbing the good order and quiet of the corporation, by clamor and noise in the night season, by intoxication, drunkenness, fighting, using obscene or profane language in the streets and other public places, to the annoyance of the citizens, or otherwise violating the public peace by indecent and disorderly conduct, or by lewd and lascivious behavior; and they shall have power in like manner to provide for the punishment of any vagrant, common street beggar, common prostitute, habitual disturber of the peace, known pickpocket, gambler, burglar, thief, watch-stuffer, ball-game player, a person who practices any trick, game, or device with intent to swindle, a person who abuses his family, and any suspicious person who can not give a reasonable account of himself. [66 v. 183, § 200.]

Punishment for breaches of peace, etc.

SEC. 2. Such punishment may be either by imposing and collecting fines, or by imprisonment in the proper jail or work-house at hard labor, or both, at the discretion of the court; but no such person shall be fined for a single offense to exceed fifty dollars; and such imprisonment and hard

labor shall not, for the first offense, exceed thirty days, for the second offense ninety days, for the third offense six months, and for the fourth or any further repetition of the offense one year. [66 v. 183, § 201.]

Imprisonment.

SEC. 3. The council may provide that any person who refuses or neglects to pay the fine imposed on conviction of any such offense, and the costs of prosecution, shall be imprisoned and kept at hard labor until, at the rate of seventy-five cents for each day's labor, exclusive of Sundays, he shall have earned an amount equal to such fine and costs. [66 v. 183, § 202.]

Regulation as to labor.

SEC. 4. The council may make suitable regulations to conduct such labor to the best advantage, and in a manner consistent with the age, sex, and health of the prisoners; and such labor may be done at the corporation prison, workhouse, or elsewhere, and under the charge of such officers or other persons as the council may select. [67 v. 75, § 203.]

Hospitals for diseased prisoners.

SEC. 5. The council may provide suitable hospitals for the reception and care of such prisoners as may be diseased or disabled; the same to be under such regulations, and under the charge of such persons, as the council may direct. [66 v. 183, § 204.]

SIXTH DIVISION: HEALTH DEPARTMENT.

CHAPTER 1. BOARD OF HEALTH.
CHAPTER 2. NUISANCES.
CHAPTER 3. HOSPITALS.
CHAPTER 4. INFIRMARIES.

CHAPTER 1.

BOARD OF HEALTH.

SECTION
1. Board of health—how constituted.
2. Term of office of members.
3. May appoint health officers, clerk, etc.
4. Suppression of nuisances; registration of marriages, births, etc.
5. Registry in Cincinnati.
6. Physician, house-owners, etc., to give notice of prevalence of disease.
7. Corpse not to be conveyed into or out of city without permit.
8. Penalty for non-compliance.
9. Punishment of infected persons for escaping, etc.
10. Regulations to secure public health.
11. Duties as to brothels, etc.
12. Disposition of minor prostitutes.
13. When female shall be treated as vagrant.
14. Treatment of diseased female, expenses thereof.
15. Suit for recovery of such expense.
16. Nuisances to be abated.
17. Temporary suspension of order or abatement.
18. Modification or re-affirmation of order.
19. Appointment of sanitary police.

SECTION
20. When dismissed.
21. Milk and meat inspectors, etc.
22. Analyses of milk, etc.
23. Vaccination to be encouraged and provided for.
24. Sanitary report; its contents, etc.
25. Penalty for violating order of board of health.
26. Penalty for violation by corporation.
27. Prosecutions, how instituted.
28. Provision for expenses of board of health.
29. Police commissioners in Cincinnati, Cleveland and Columbus to act as board of health.

Board of health—how constituted.

SECTION 1. When the council of a city or village establishes a board of health, such board shall be composed of the mayor, who shall be president by virtue of his office, and six members, to be appointed by the council, who shall serve without compensation, and majority of whom shall constitute a quorum. [66 v. 200, § 303.]

Term of office of members.

SEC. 2. The term of office of the members of the board shall be three years from the date of appointment, except that those first appointed shall be classified as follows: two to serve for three years, two for two years, and two for one year, and thereafter two shall be appointed annually. [66 v. 201, § 304.]

May appoint health officer, clerk, etc.

SEC. 3. The board may appoint a health officer, a clerk, as many ward or district physicians as it may deem necessary for the care of the sick poor and such other persons as may be in need, and define their duties and fix their salaries; and all such appointees shall serve during the pleasure of the board. [66 v. 202, § 305.]

Suppression of nuisances by boards of health.

SEC. 4. The board of health may abate and remove all nuisances in the corporation, and assess the costs and expenses of the same upon the property wherein such nuisance is situated, which assessment when duly certified by the president of the board to the county auditor, shall become a lien, to be collected as other taxes in favor of the corporation; compel the owners, agents, assignees, occupants, or tenants of the lot, property, house, or building upon or in which any nuisance may be, to abate and remove the same; regulate the construction, arrangement, emptying, and cleaning of all water closets and privy vaults; create a complete and accurate system of registration of births, marriages, deaths, and interments occurring in such corporation, for the purposes of legal and genealogical investigations, and to furnish facts for statistical, scientific, and particularly for sanitary inquiries; and when complaint is made, or a reasonable belief exists, that an infectious or contagious disease prevails in any locality or house, the board may visit such locality or house, make all necessary investigations by inspection, and on discovering that such infectious or contagious diseases exist, send the person so diseased to the pest house or hospital. [71 v. 159, § 306.]

Registration of marriages, births and deaths, etc.

Registry in Cincinnati.

SEC. 5. In cities of the first grade of the first class which for this purpose alone, shall be co-extensive with the county, it shall be the duty of physicians and professional midwives

to keep a registry of the several births at which they have assisted professionally, which registry shall contain the time of such birth, sex, and color of the child, and the names and residence of the parents; clergymen and other persons authorized to solemnize marriages, shall keep a registry of all marriages solemnized by them; physicians who have attended deceased persons in their last illness, and undertakers and sextons who have buried deceased persons, shall keep a registry of the name and age of such persons, and their residence at the time of their death; and all such physicians, professional midwives, clergymen, and all persons authorized to solemnize marriages, undertakers, and sextons, shall report to the board of health all births, marriages, and deaths occurring within the limits of such city, as registered by them, which reports shall be made as often as the board of health may require. [71 v. 159, § 306.]

Duty of physicians, house-owners, etc., to give notice of prevalence of infectious diseases.

SEC. 6. The owner, or agent of the owner, of a house, in which a person resides, who has the small-pox, or any other disease dangerous to the public health, and the physician called to attend the person so affected, shall, within twenty-four hours after becoming cognizant of the fact, give notice thereof to the board of health; and when a person, so affected, is removed to a pest-house or hospital, the board of health is empowered to use all necessary means to restrain him of his liberty, until the danger of infection, or contagion, from such disease, ceases. [71 v. 159, § 307.]

Permit to convey corpse.

SEC. 7. No person shall convey a corpse to or from any city, without a permit from the board of health. [71 v. 159, § 307.]

Penalty for non-compliance.

SEC. 8. Any person, other than an officer, who fails to faithfully comply with any of the provisions of the four preceding sections, shall pay, for each offense, a sum not exceeding fifty dollars, to be recovered in a civil action, in the police court of such city, in the name of the state. [71 v. 159, §§ 306–7.]

Punishment of infected person for escaping, etc.

SEC. 9. A person removed to a pest-house, or hospital, who willfully leaves or escapes therefrom, before the physician thereof issues a certificate of restored health, shall be fined not less than five, nor more than fifty dollars, or imprisoned not less than one, nor more than ten days. [66 v. 201, § 308.]

Regulation to secure public health.

SEC. 10. The council may grant power to the board of health, to make such orders and regulations as it may deem necessary for the public health, and for the prevention of diseases; and such orders and regulations shall have all the force and effect of ordinances of the corporation. [66 v. 201, § 309.]

Duty as to brothels, etc.

SEC. 11. The board of health, in cities of the first class, and, when empowered by resolution of the council, in cities of the second class, are authorized and directed to enter brothels, and houses of assignation, and make enumerations,

as often as they may deem necessary, of the name, age, and color of the inmates therein, and make a record thereof, in a book to be kept in the office of the board of health, open to the inspection of the members of the board, the police, and others. [66 v. 201, § 310.]

Disposition of minor prostitute.

SEC. 12. When a female, under the age of eighteen years, or believed to be under that age, is found in such brothel, or house of assignation, it shall be the duty of the board of health to return her to her home, if she has a home; and if such female has no home, then she shall be consigned to the house of refuge and correction of the corporation, or such benevolent institution, established for the reformation of abandoned females, as the board of health may elect. [66 v. 202, § 311.]

When female shall be treated as a vagrant.

SEC. 13. No such female shall be consigned to a house of refuge and correction, or benevolent institution, against her will; but in case she declines the care and protection tendered her, it shall be the duty of the board to report her to the mayor, or police court, forthwith, to be tried as a vagrant. [66 v. 202, § 312.]

Treatment of diseased female; expense thereof.

SEC. 14. When a female is found in a house of ill fame, or assignation, affected with contagious or infectious disease, and is removed to, or if such person apply for admission to, any hospital, or pest-house, for treatment, the costs of such removal, and the expense of boarding and washing, while in such hospital, or pest-house, shall be paid by the proprietor of the house of ill fame, or assignation, from which such patient is removed, or in which she was last an inmate; such payment shall be made before the patient is discharged from such hospital, or pest-house; and the expense of boarding, washing, and medical attendance, shall be a lien upon the house and premises in which such female shall have been so found, which lien may be enforced as other liens for the security of money. [66 v. 202, § 313.]

Suit for recovery of such expense.

SEC. 15. If the proprietor of such house of ill fame, or assignation, fails or refuses to pay such expense, legal proceedings shall be immediately instituted against him, and such patient shall be held as a witness in the case. [66 v. 202, § 314.]

Nuisances to be abated.

SEC. 16. When any building, erection, excavation, premises, business, pursuit, matter, or thing, or the sewerage, drainage, or ventilation thereof, is, in the opinion of the board of health, in a condition dangerous to life or health, the board shall declare the same, to the extent it may specify, a public nuisance, or dangerous to life and health; and the board may order the same to be removed, abated, suspended, altered, or otherwise improved or purified, as in the order shall be specified, and shall cause the order, before its execution, to be served on the agent, owner, occupant, or tenant, or such of them as are in the corporation, and can be found. [66 v. 202, § 315.]

Temporary suspension of order or abatement.

SEC. 17. If a party so served, before the execution of the order is commenced, apply to the board to have the order or its execution stayed or modified, it shall be the duty of the board to temporarily suspend or modify it, and to give the party, as the case, in the opinion of the board, may require, a reasonable and fair opportunity to be heard before the board, and to present proofs and facts against the declaration and the execution of the order, or in favor of its modification. [66 v. 202, § 316.]

Modification or reaffirmation of order.

SEC. 18. The board shall enter upon its minutes such facts and proofs as it may receive, and its proceedings on the hearing, and thereafter may rescind, modify, or reaffirm its former declaration and order, and require execution of the original or of a new or modified order, in such form as it may finally determine. [66 v. 203, § 317.]

Appointment of sanitary police by board of health.

SEC. 19. The board of health shall have power to appoint as many persons for sanitary duty as in its opinion the public health and sanitary condition of the corporation may require; and such persons shall have general police powers, be known as the sanitary police, perform such duties for the promotion of the public health, and such other duties as the board of health may direct, and shall serve during the pleasure of the board. [71 v. 160, § 318.]

When such police shall be dismissed.

SEC. 20. When, in the opinion of the board of health, the services of a member of the sanitary police is no longer required, he shall, on recommendation of the board of health, be returned to duty as a regular policeman, or be dismissed, as the mayor, or, in cities of the first and second grades of the first class, and cities of the first grade of the second class, the police commissioners may direct. [66 v. 203, § 319.]

Milk and meat inspectors, etc.

SEC. 21. The board of health may appoint such number of inspectors of milk and meat, and as many market-masters and such other persons as may be necessary to carry out the provisions of this chapter, define their duties, and fix their compensation; and such inspectors of milk shall keep, for public inspection, a record of the names and places of business of all persons engaged in the sale of milk. [71 v. 160, § 318.]

Analysis of milk, etc.

SEC. 22. All dairies, including the cows, cow-stables, milk-houses, and milk-vessels, the owners of which offer milk for sale within the corporate limits of the city, shall be subject to inspection by the inspector; that officer may enter any place where milk is sold or kept for sale, and all carriages used in the conveyance of milk within the corporate limits; and whenever he has any reason to believe milk found therein is impure or adulterated, he shall take specimens thereof and subject them to satisfactory tests, or, if the board of health so direct, to chemical analysis, the result of which he shall record and preserve as evidence, and a certificate of such result, sworn to by the analyst, shall be admissable in evidence in all prosecutions under this chapter. [71 v. 160, § 318.]

Vaccination to be encouraged and provided for.

SEC. 23. The board of health may take measures and supply agents, and afford inducements and facilities for gratuitous vaccination and disinfection; may afford medical relief to and among the poor of the corporation, as, in its opinion, the protection of the public health may require; and during the prevalence of any epidemic, may provide temporary hospitals for such purposes. [66 v. 203, § 320.]

Sanitary report, its contents, etc.

SEC. 24. It shall be the duty of the board of health, on or before the first Monday of March in each year, to make a report, in writing, to the council of the corporation, upon the sanitary condition and prospects of such city or village, which report shall contain the statistics of deaths, the action of the board and its officers and agents, and the names thereof for the past year; and it may contain other useful information, and the board shall suggest therein any further legislative action deemed proper for the better protection of life and health. [66 v. 203, § 321.]

Penalty for violating order of board of health.

SEC. 25. Whoever violates any provision of this chapter, or any order of the board of health made in pursuance thereof, or obstructs or interferes with the execution of any such order, or willfully and illegally omits to obey any such order, shall be fined in any sum not exceeding one hundred dollars, or imprisoned for any time not exceeding ninety days, or both; but no person shall be imprisoned under this section for the first offense. [66 v. 203, § 322.]

Violation by a corporation.

SEC. 26. If such violation, obstruction, interference, or omission be by a corporation, it shall forfeit and pay to the proper city or village, any sum not exceeding one hundred dollars, at the discretion of the court, to be collected in a civil action brought in the name of such city or village; and any officer of such corporation consenting to such violation, shall be subject to imprisonment as above provided. [66 v. 204, § 323.]

Prosecutions, how instituted.

SEC. 27. Prosecutions under this chapter, and the civil action provided for in the preceding section, shall be instituted before any tribunal within the municipal corporation having jurisdiction thereof. [66 v. 204, § 324.]

Provision for expenses of board of health.

SEC. 28. Where expenses are incurred by the board of health, under the provisions of this chapter, it shall be the duty of the council, upon application and certificate from the board of health, to pass the necessary appropriation ordinances to pay the expenses so incurred and certified; and the council is hereby empowered to levy, subject to the restrictions contained in the ninth division of this title, and set apart, the necessary sum to carry into effect the provisions of this chapter. [71 v. 160, § 325.]

Police commissioners in certain cities to act as board of health.

SEC. 29. In cities of the first and second grades of the first class, and cities of the first grade of the second class, there shall be no board of health, but the boards of police commissioners shall exercise all the powers and perform all the

duties required of the boards of health and mayors in this chapter. [73 v. 74, § 18; 73 v. 57, § 36; 74 v. 163.]

CHAPTER 2.

NUISANCES.

SECTION
1. Power to fill lots, remove nuisances, etc.
2. Duty of owner.
3. Nuisance to be abated at owner's expense, etc.
4. Duty of health officers to enforce provisions of this chapter.

Power of corporation to fill lots, remove nuisances, etc.

SECTION 1. All municipal corporations shall have power to cause any lot of land within their limits, on which water at any time becomes stagnant, to be filled up or drained, and to cause all putrid substances to be removed from any lot; and the council or trustees may direct, by resolution, the owner to fill up or drain such lot, or remove such putrid substance. [66 v. 225, § 452.]

Duty of owner to comply with direction.

SEC. 2. It shall be the duty of such owner, or his agent or attorney, after service of a copy of such resolution, or after a publication of the same in some newspaper of general circulation in such corporation for two consecutive weeks, to comply with the directions of the resolution within the time therein specified. [66 v. 225, § 453.]

To be done at owner's expense, in case of refusal or neglect, etc.

SEC. 3. In case of failure or refusal to comply with the resolution, the work required thereby may be done at the expense of the corporation, and the amount of money so expended shall be recovered from the owner before a justice of the peace, or other court of competent jurisdiction; and such expense shall, from the time of the adoption of the resolution, be a lien on such lot, which may be enforced by suit in the court of common pleas of the proper county; and like proceedings may be had as directed in relation to the improvement of streets. [66 v. 225, § 454.]

Duty of health officers to enforce provisions of this chapter.

SEC. 4. It shall be the duty of the officers connected with the health department of every such municipal corporation, to see that the provisions of this chapter are strictly and promptly enforced.

CHAPTER 3.

HOSPITALS.

SECTION
1. Board of hospital commissioners.
2. Who shall compose the board.
3. Their term of office.
4. Their powers, compensation of appointees, etc.
5. Regular meetings and record thereof.
6. No expenditure without authority of board; no member to be interested, etc.
7. Plans, specifications, etc.
8. Terms of contracts, etc.
9. Board to advertise for proposals.
10. Bids to be accompanied by bond, etc.
11. Bids to be sealed, indorsed, etc.
12. Contract with lowest bidder.
13. Board to control hospital, etc.
14. Council may enter into agreement with corporation, etc.
15. Exception of application as to Commercial Hospital of Cincinnati.

Board of hospital commissioners.

SECTION 1. When the council of a city or village enters upon and takes possession of grounds purchased, appropriated, or otherwise obtained for hospital purposes, and, by resolution or ordinance, determines to erect thereon or rebuild a hospital, the erection and repair thereof, or any addition thereto, and the management, direction, and control of the same, shall be vested in a board of five commissioners, called the "board of hospital commissioners." [66 v. 197, § 283.]

Who shall compose the board.

SEC. 2. The board shall consist of the mayor, who shall, by virtue of his office, be its president, and four trustees, to be appointed by the mayor, with the consent of the council, each of which commissioners shall be resident freehold electors of the corporation, and they shall not receive any compensation for their services. [66 v. 197, § 284.]

Their terms of office.

SEC. 3. The term of office of the appointed members of the board shall be four years, but the members first appointed shall hold their offices, respectively, as shall be determined by lot, at the first meeting of the board, for the period of one, two, three, and four years, and thereafter one member shall be appointed each year for the full term of four years; and a majority of the board shall constitute a quorum. [66 v. 197, § 285.]

Their powers, compensation of appointees, etc.

SEC. 4. The board shall have power to appoint a clerk, an architect, a superintendent, and other necessary employés, fix their compensation, and adopt a suitable plan for such hospital, and make all contracts for the erection and furnishing of the same; but the salary of the appointees, and the plan of the hospital, before any contract for its erection is entered into, shall be submitted to and approved by the council. [66 v. 197, § 286]

Regular meetings and record thereof.

SEC. 5. The board shall hold regular meetings at such time and place as may be agreed upon, and cause to be kept a full record of its proceedings; and no contract which it enters into shall be valid until assented to at a regular meeting and concurred in by a majority of all the members, and

such assent entered on the minutes of its proceedings. [66 v. 197, § 287.]

No expenditure without authority of board.

SEC. 6. No money shall be paid for the erection, rebuilding, or repair of a hospital, or for an addition thereto or for supplies therefor, unless first authorized by the board, and upon the warrant of the proper officer of the corporation; and no member of the board shall be interested, directly or indirectly, in any contract concerning the institution. [66 v. 197, § 288.]

No member to be interested, etc.

Plans, specifications, etc.

SEC. 7. It shall be the duty of the board, before entering into any contract for the erection of a hospital building, to cause plans, specifications, detailed drawings, and forms of bids to be prepared; and when adopted by the board, it may, at its discretion, cause the plans and drawings to be lithographed, and the specifications, and forms of bids, and a form of contract and bond, to be prepared by the solicitor of the corporation, and have the same printed for distribution among the bidders. [66 v. 198, § 289.]

Terms of contracts, etc.

SEC. 8. All contracts shall be made in the name of the corporation, and it shall be stipulated therein that the contractors will not execute any extra work, or make any modifications or alterations mentioned in the specifications and plans, unless ordered in writing by the board; that they will not claim any pay for the same unless such written order is given, and the extra price of compensation fixed and agreed upon; and copies of the plans and drawings, attested by the contractor, and the original bids, specifications, and contracts shall be deposited in the office of the clerk of the corporation. [66 v. 199, § 290.]

Proposals to be advertised for.

SEC. 9. The board shall not enter into any contract for work or materials, except as relates to procuring plans, drawings, specifications, and forms of bids, without first causing thirty days' notice to be given in one or more newspapers of general circulation in the corporation, that sealed proposals will be received for doing the work or furnishing the materials. [66 v. 199, § 291.]

Bids to be accompanied by bond, etc.

SEC. 10. Each bid shall be accompanied with a bond, signed by sufficient sureties, for the acceptance of the contract, if awarded by the board, to fully secure any difference between the amount of such bid and the next higher bid; and such amount shall be collected by the board, and paid into the hospital fund, in case of refusal by the bidder to enter into contract according to his bid, within such reasonable time as the board may determine. [66 v. 199, § 292.]

Bids to be sealed, endorsed, etc.

SEC. 11. All bids shall be inclosed in a sealed envelope and deposited with the clerk of the board, and such sealed envelope shall have endorsed thereon the nature of the same; and all bids shall be opened at a regular meeting of the board. [66 v. 198, § 294.]

Contract with lowest bidder.

SEC. 12. The board shall enter into contract with the lowest responsible bidder, upon his giving bond to the corpora-

tion, with such surety as the board shall approve, that he will perform the work and furnish materials in accordance with his contract; and on failure of such bidder, within a reasonable time, to be fixed by the board, to enter into bond with the surety before provided, a contract may be made with the next lowest responsible bidder, and so on, until a contract is effected by a contractor giving bond as aforesaid; provided, that the board may reject any and all bids. [66 v. 198, § 293]

Board to control hospital, etc.

SEC. 13. The board shall have the entire management and control of such hospital, when the same has been completed and ready for use, and of the furnishing thereof, subject to the ordinances of the council, and shall establish such rules for its government, and the admission of persons to its privileges, as it may deem expedient; and it shall also have power to employ a superintendent, steward, physicians, nurses, and such other employés as it may deem necessary, and fix the compensation of all persons so employed, which compensation shall be subject to the approval of the council. [67 v. 71, § 295.]

Council may enter into agreement with any corporation, etc.

SEC. 14. The council may enter into an agreement with a corporation or association, organized for charitable purposes in such municipal corporation, for the erection and management of a hospital for the sick and disabled, and for a permanent interest therein, to such extent and upon such terms and conditions as may be agreed upon between the council and such corporation or association; and the council shall provide for the payment of the amount agreed upon, for any interest so acquired, either in one payment or installments, or so much, from year to year, as the parties may stipulate. [66 v. 199, § 296]

Exception of application as to Commercial Hospital of Cincinnati.

SEC 15. The provisions of this chapter shall, so far as applicable, govern hospitals heretofore established and erected; but nothing in this title repeals any part of the act of March 11, 1861, "regulating the commercial hospital of Cincinnati," or the acts amendatory thereof and supplementary thereto. [67 v. 33, § 297.]

CHAPTER 4.

INFIRMARIES.

SECTION
1. Board of infirmary directors.
2. Location of pest-houses, etc.
3. Election and qualification of directors—compensation.
4. To be governed by regulations applicable to hospitals.
5. Their care for the inmates; separation of the sexes, etc.
6. Appointment of overseers of the poor.
7. Police board to act as infirmary directors in Cincinnati.

SECTION
8. Appointment of officers, etc., of infirmary, and their compensation.
9. Appointment of overseers of the poor.
10. Penalty for misapplying supplies, by overseer.

Board of infirmary directors.

SECTION 1. The management of affairs of all corporation infirmaries now existing, or which may hereafter be established, and the care of the inmates thereof, the erection and enlargement of infirmary buildings and additions thereto, and the repair and furnishing thereof, the improvement of the grounds therewith connected, and the granting of outdoor relief to the poor, shall be vested, except in cities of the first grade of the first-class, in a board of three directors, which shall be called "the board of infirmary directors." [72 v 76, § 298.]

Location of pest-houses, etc.

SEC. 2. The infirmary, or the pest-house of the corporation may be located either within or outside of the corporation limits, and the council is authorized to purchase and hold the necessary real estate on which to build the same. [72 v. 76, § 298.]

Election and qualification of directors; compensation.

SEC. 3. The directors shall be electors and be elected by the electors of the corporation, and shall hold their office for three years, except that at the first election one of the directors shall be chosen to serve for one year, one for two years and one for three years, and thereafter one shall be elected annually, and the directors shall receive such compensation as the city council may, by ordinance, provide. [70 v. 100, § 299.]

To be governed by regulations applicable to hospitals.

SEC. 4. In the management of an infirmary, in the care and treatment of the inmates thereof, and in the erection, enlargement, or repair of any building for infirmary purposes, or of any addition thereto, the directors shall have the same powers, be governed by the same regulations, and perform the same duties, as far as applicable, as are vested in the commissioners of hospitals, as provided in the preceding chapter; and the power of the council in relation to such infirmaries, and the conduct of the directors thereof, shall be the same, so far as applicable, as provided in the chapter in relation to hospitals. [66 v. 200, § 300.]

Their care for the inmates; separation of sexes, etc.

SEC. 5. The directors shall further see that the inmates of such infirmary are comfortably provided for and kindly treated; and they may, whenever deemed necessary, provide for the care and support of the males and females in separate buildings, or in separate departments of the same building. [66 v. 200, § 301.]

Appointment of overseers of the poor.

SEC. 6. The council shall provide by ordinance for the appointment by the mayor, subject to the approval of the council, of such number of persons as may be deemed necessary, not to exceed one in each ward, to act as overseers of of the poor, and shall prescribe the duties of such persons in relation to the care of the poor, and their removal, when

necessary, to the infirmary; but such person shall not receive any compensation for their services. [72 v. 12, § 302]

Police commissioners to act as infirmary directors in Cincinnati.

SEC. 7. In cities of the first grade of the first-class, the board of police commissioners shall have the powers and perform the duties given and prescribed to and for the board of infirmary directors in this chapter.

Appointment of officers, etc., of infirmary, and their compensation.

SEC. 8. The board of police commissioners of such city shall appoint a general superintendent, with a salary not exceeding twelve hundred dollars per annum; a superintendent, who shall be empowered to take charge of the infirmary, with a salary not exceeding one thousand dollars; a matron, with a salary not exceeding three hundred dollars; a physician, with a salary not exceeding six hundred dollars; a store-keeper with a salary not exceeding five hundred dollars; an engineer, with a salary not exceeding six hundred dollars; a baker, with a salary not exceeding three hundred and sixty dollars; a farmer, with a salary not exceeding twenty-five dollars per month; a dairyman, with a salary not exceeding twenty dollars per month; a cook, with a salary not exceeding twenty dollars per month; a seamstress with a salary not exceeding fifteen dollars per month; a forewoman in the laundry, with a salary not exceeding fifteen dollars per month; and a nurse for each ward in the infirmary, at a salary not exceeding twenty-five dollars per month.

Appointment of overseers of the poor.

SEC. 9. The board of police commissioners shall forthwith divide the city into twelve districts, and detail from the sanitary and regular police force of the city, twelve men who shall perform all the duties heretofore performed by overseers of the poor; but for the discharge of their respective duties under the provisions of this chapter, the board may allow extra compensation to the members of the sanitary and police force thus detailed, a sum not exceeding ten dollars per month, each, while engaged upon such detailed duty.

Penalty for misapplying supplies by overseer.

SEC. 10. Whoever, being an officer detailed as provided in the last section, misapplies, or in any manner diverts from the uses to which supplies of any sort are appropriated by the board of police commissioners for distribution, shall be fined not exceeding one hundred dollars, and imprisoned in the work-house for a period not exceeding thirty days, and forever thereafter be ineligible to act as a member of the police or sanitary force of such city.

SEVENTH DIVISION: IMPROVEMENTS.

CHAPTER 1. BOARD OF IMPROVEMENTS.
CHAPTER 2. BOARD OF PUBLIC WORKS.
CHAPTER 3. APPROPRIATION BY CITIES AND VILLAGES OF PRIVATE PROPERTY TO PUBLIC USE.
CHAPTER 4. ASSESSMENTS FOR IMPROVEMENTS.

CHAPTER 1.

BOARD OF IMPROVEMENTS.

SECTION
1. Composition of board of improvements.
2. Duties of the board.
3. May adopt rules, regulations, etc.
4. Clerk of the board—his duties, etc.
5. Board may employ superintendents of improvements, etc.
6. No improvements without recommendation of board.
7. To superintend construction of public works, etc.
8. Petitions for improvements to be presented to board.
9. Special boards of improvements in villages.
10. Powers and duties thereof.
11. No compensation allowed to members of board.
12. Division of Cleveland into districts for street cleaning purposes; etc.
13. Board to advertise for proposals to keep streets, etc., in repair, etc.
14. Bids to be accompanied by bond.
15. How contracts let.
16. Contracts to be in writing, etc.; new contracts to be made when old expire.
17. Duty of board when contractor fails to perform contract.
18. How contractor paid.
19. Levy of tax for such purpose.

Composition of board of improvements.

SECTION 1. When the council of a city establishes a board of improvements, such board shall be composed of the mayor, civil engineer, the street commissioner, the chairman of the committee on streets of the council, and one freehold elector of the corporation, to be appointed by the mayor with consent of the council, for such time as may, by ordinance, be determined; provided, that in cities of the second grade of the first class, such board shall be composed of the mayor, the civil engineer, the street commissioner, one freehold elector of the corporation to be elected by the council, and the chairman of the committee on streets of the city council; and provided further, that in cities of the first grade of the first class, there shall be no such board, but the duties of the board, defined herein, are devolved upon the board of public works, mentioned in chapter two of this division, which board of public works shall, in addition to its other powers and duties, have all the powers and perform all the duties required of the board of improvements in this chapter

not inconsistent with said chapter two. [73 v. 143, § 496; 73 v. 44.]

Duties of board.

SEC. 2. The board shall supervise the cleaning, repairing, and improving streets, alleys, avenues, lanes, public wharves and landings, market-houses and spaces, bridges, sewers, drains, ditches, culverts, ship channels, streams and water courses, and the lighting all such public places as may be deemed necessary, within the corporation, under the control of the council of the city. [67 v. 78, § 497.]

May adopt rules and regulations, etc.

SEC. 3. It may adopt such rules and regulations for its government as it may deem necessary and expedient to effect the purpose of its organization, not inconsistent with the ordinances of the corporation or constitution or laws of the state. [66 v. 232, § 498.]

Clerk of the board—his duties, etc.

SEC. 4. It may appoint a clerk, whose duty it shall be to attend all meetings of the board, and keep a complete journal of all its proceedings, orders, and resolutions, which journal shall be at all times open for public inspection; it shall also be the duty of the clerk to perform such other duties as the board shall require; and he shall receive such compensation as the council, upon the recommendation of the board, may determine. [66 v. 233, § 499.]

Board may employ superintendents of improvements, etc.

SEC. 5. The board may employ such person or persons to superintend and perform the work of making improvements as the interests of the corporation demand; and the services of such employés shall be paid for, on the recommendation of the board, in such manner as the council may determine. [66 v. 233, § 500.]

No improvements without recommendation of board.

SEC. 6. No improvements or repairs shall be ordered or directed by the council in any corporation where such board exists, for any street, lane, alley, avenue, market house or space, bridge, sewer, drain or ditch, culvert, navigable stream, water-course, ship channel, or public wharf or landing of the corporation, except on the recommendation of the board of improvements. [67 v. 79, § 501.]

To superintend construction of public works, etc.

SEC. 7. The board shall exercise such powers and perform such duties in the superintendence and construction of public works and improvements constructed by authority of the council, or owned by the corporation, and perform such other duties relating to the public improvements and the enforcement of ordinances relating to the streets of the corporation, as the council may, from time to time, prescribe. [66 v. 234, § 502.]

Petitions to be presented to board, etc.

SEC. 8. All petitions for improvements from owners of property shall be presented to the board, who shall report, from time to time, to the council when any such improvement is necessary or proper; and when an assessment is required, the same shall be reported, with an estimate of the amount to be assessed, to the council, which shall take such action thereon as may be deemed proper. [66 v. 234, § 503.]

SEC. 9. The council of a village, in which there is no civil engineer or street commissioner chosen by the electors,

Special boards of improvement in villages.

may appoint two resident freehold electors of the corporation, who shall hold their office for two years, and who, with the mayor, shall constitute the board of improvements of such corporation. [66 v. 234, § 504]

Powers and duties thereof.

SEC. 10. Such board shall have the same powers and perform the same duties in respect to the village as are invested in and required of the board of improvements under the preceding sections of this chapter. [66 v. 234, § 505]

No compensation allowed to members of board.

SEC. 11. The members of the board of improvements shall not be entitled to receive any compensation for their services. [66 v. 234, § 506]

Division of Cleveland into districts for street cleaning purposes, etc.

SEC. 12. In cities of the second grade of the first class, the board of improvements shall divide the city into not less than five nor more than eighteen districts, for the purpose of contracting for keeping in repair and cleaning the ditches, avenues, streets, alleys, and market places within such districts. [74 v. 103, §§ 1, 2]

Board to advertise for proposals to keep streets, etc., in repair, etc.

SEC. 13. The board in such city shall advertise for ten days, in not exceeding three newspapers of general circulation therein, for sealed proposals, for keeping in repair, removing the garbage as may be provided, and cleaning the ditches, catch-basins, avenues, streets, alleys, and market-places, within each of such districts, at a stated sum per annum, for each and every year, for the term of not less than one nor more than five years; provided, that separate proposals may be received and contracts made for any particular branch or division of the work herein provided for, at the option of the board of improvements [74 v. 209, § 2]

Bids to be accompanied by bond.

SEC. 14. Each bidder shall accompany his bid with a bond in the sum of one thousand dollars, to be signed by himself and two freeholders, to be approved by the board of improvements, to the effect that if the contract is awarded to him he will accept, and comply with, the terms thereof, and unless such bond accompany the bid, the same shall not be entertained by the board. [74 v. 104, § 3.]

How contracts let.

SEC. 15. The contracts for each of such districts shall be awarded to the lowest and best bidder; the board may require from the successful bidder such additional bonds as it may deem proper, conditioned for the faithful performance of his contract; and all contracts shall be performed and carried out subject to the approval of the board. [74 v. 104, § 3.].

Contracts to be in writing, etc. New contracts to be made when old expire.

SEC. 16. All contracts shall be reduced to writing, signed by the contractor, and the mayor and the clerk of the board of improvements, and be subject to the approval of council; and after the expiration of original contracts, others may be entered into as provided in section fifteen. [74 v. 104, §§ 4, 7.]

Duty of board when contractor fails.

SEC. 17. If a contractor abandon, or fail to perform, his contract, the board may cancel and re-let the same in the manner provided for letting original contracts. [74 v. 104, § 4.]

How contractor paid.

SEC 18. At the end of every two weeks, if the contracts have been faithfully performed, the board shall give, upon demand by the contractor, a certificate to the city auditor for the one twenty-sixth part of the annual contract price; but the board may retain therefrom, as an additional guarantee for the faithful performance of the contract, such proportion thereof as it may deem just and equitable, which amount shall be stated in the contract; and upon presentation of such certificate to the city auditor, that officer shall draw his warrant upon the city treasurer for the amount stated in the certificate, which shall be paid by the city treasurer from the proper fund. [74 v. 104, § 5.]

Levy of tax for such purpose.

SEC 19. At the time of making annual estimates it shall be the duty of the board of improvements of such city of the second grade of the first class to make an estimate of the amount required for the payment of such contractors, which estimate shall be separately certified to the council, which shall, at the time of making the annual levy, provide a levy upon all the taxable property within the city for the amount so certified, which, when collected, shall be paid to the credit of a fund, to be called the street cleaning fund; but nothing herein contained shall be so construed as to authorize an increase of the tax which such city is permitted to levy. [74 v. 105, § 6.]

CHAPTER 2.

BOARD OF PUBLIC WORKS.

SECTION
1. Election of board.
2. Bond.
3. Time of members devoted to duties of office, and salaries.
4. Daily sessions; quorum, etc.
5. Records and books.
6. To sit in council.
7. Officers and employés.
8. To have powers of certain other boards.
9. Estimate of cost of work and material to be made.
10. When resolution, ordinance, etc., to be sent to council.
11. Advertisement for proposals.
12. How contracts made.
13. Liability not to be created except by authority of board.
14. Member or employé not to be interested in contract.
15. Board may compel the attendance of witnesses and administer oaths.
16. Trial of person accused.

SECTION
17. Contract void in such case.
18. Names of parties interested in contracts to be disclosed.
19. Contracts without approval of council.
20. Contracts only modified by order of board.
21. As to payment for extra work.
22. To publish resolutions declaring necessity of improvements.
23. Grant of use of street—when recommendation of board essential.
24. Ordinances for payment of money.
25. How and for what cause member of board removed; vacancies.
26. Revenues of water works, how expended.
27. The act of 73 v. 212 and 74 v. 105 unaffected.

SECTION 1. In cities of the first grade of the first class

there shall be a board of public works, composed of five members, who shall be freehold electors of such city, and elected by the electors thereof, to serve for the term of five years; one to be elected at each annual municipal election held in such city. [73 v. 43, § 1.] Election of board.

SEC. 2. Each member shall give bond with at least three sureties to the satisfaction of the council, in the sum of fifty thousand dollars, conditioned for the faithful performance of his duties, which sureties shall each be required to take an oath that he is worth the amount of the bond above all liabilities; and the bond shall also be subject to the approval of the mayor and city solicitor. [73 v. 45, § 11.] Bond.

SEC. 3. The members of the board shall devote their entire time and attention to the duties of their office, and shall each receive, as compensation, a salary of thirty-five hundred dollars per annum. [73 v. 44, § 1.] Time of members devoted to duties of office, and salaries.

SEC. 4. The board shall hold daily meetings, and three shall constitute a quorum for the transaction of business; the ayes and nays shall be called and entered upon a journal upon the passage of every resolution or order of any kind; and no resolution or order shall be adopted unless three votes are recorded in its favor. [73 v. 44, § 2.] Daily sessions; quorum, etc.

SEC. 5. The board shall keep a complete record of all its proceedings, and a copy from its records, certified by the clerk, shall be competent evidence in all courts; but a separate journal and record, and separate accounts, shall be kept touching all matters connected with the control of the water works of such city. [73 v. 44, § 2.] Records and books.

SEC. 6. The members of the board shall have seats in both branches of the common council, and be entitled to take part in its proceedings and deliberations on all questions relating to matters under their charge, subject to such rules as the council shall, from time to time, prescribe, but without the right to vote; and one of the board may be compelled to attend every meeting of either board of council in the same manner as the members. [73 v. 44, § 3.] To sit in council.

SEC. 7. The board shall have power to employ such engineers, clerks, superintendents, laborers, and other persons as it may deem necessary for the execution of its duties, and fix their salaries and compensation; but the salaries of such engineers, clerks, and superintendents as are appointed for a definite period of time, shall be fixed within limits prescribed by the common council; and any of such persons may be removed by the board at any time. [73 v. 44, § 4.] Officers and employés.

SEC. 8. The board shall have all the powers which, in other cities, are vested in the trustees of the water works, the board of improvements, the commissioners of sewers, the platting commission, and the park commissioners, as provided in the chapters in this title relating to those matters, and shall be governed by the rules prescribed by law for the To have powers of certain other boards.

government of those boards, when not inconsistent with the provisions of this chapter. [73 v. 44, § 5.]

Estimate of cost of work and material to be made.

SEC. 9. When the board deems it advisable to make a contract for the execution of any work, or the purchase of materials, for matters under its charge, a careful estimate shall be made of the cost of such work or material. [73 v. 43, § 6.]

When resolution, ordinance, etc., to be sent to council.

SEC. 10. In all cases where assessments are to be made, or where the estimated cost of any work or material exceeds five hundred dollars, the board shall transmit to council, with its recommendations, a resolution or ordinance, as the case may be, authorizing the execution of such work, or the purchase of such materials, at a cost not to exceed the amount of the estimate, which shall be transmitted. [73 v. 43, § 6.]

Advertisements for proposals.

SEC. 11. Upon the passage by council of the resolution or ordinance, it shall be the duty of the board of public works to advertise for proposals, in accordance therewith, for a period of at least ten days, in one or more of the newspapers of general circulation in the city, for sealed proposals to do the work or furnish the material required; and the board shall award the contract to the lowest responsible bidder; provided, the cost under such bidder does not exceed the estimate transmitted to council. [73 v. 43, § 6.]

How contracts made.

SEC. 12. Contracts shall be made in the name of the city, executed in behalf of the city by the presiding officer of the board, and filed in their office. [73 v. 43, § 7.]

Liability not to be created except by authority of board.

SEC. 13. No member of the board, nor other person, whether in the employ of the board or otherwise, shall have power to create any liability on account of the board, or the funds under its control, except by express authority of the board, conferred at a meeting thereof, duly and regularly convened. [68 v. 99, § 4.]

Members or employes not be interested in contract.

SEC. 14. No member, officer, or employé of the board, shall be directly or indirectly interested in any contract, or work of any kind whatever under its direction; and any contract or work in which any such person shall have an interest shall be void; it shall be the duty of any person having knowledge or information of the violation of this section forthwith to report the facts to the board; and the board shall give reasonable notice to the parties interested, and at the earliest convenient day investigate the same, and hear the evidence offered on both sides. [68 v. 99, § 5.]

Board may compel attendance of witnesses and administer oaths.

SEC. 15. The board shall have power in such case to compel the attendance of witnesses and the production of books and papers; and the presiding officer shall have authority to administer the necessary oaths. [68 v. 98, § 5.]

Trial of person accused.

SEC. 16. If a member of the board be involved in any such charge he shall not again sit or vote in the board until the result of the investigation is determined, announced, and entered on the minutes of the board; a majority of the board not involved in the charge shall be sufficient to decide the questions; and if an officer or employé of the board be

found, upon such inquiry, to have violated any of the foregoing provisions, such finding shall at once operate as a dismissal of such officer or employé. [68 v. 98, § 5]

Contract void in such case.

SEC. 17. If a contract made or authorized by the board is found to violate any of the foregoing provisions, it shall at once become void and of no effect, and no money shall be paid for services rendered or materials furnished under the same. [68 v. 98, § 5]

Names of parties interested in contracts to be disclosed.

SEC. 18. No money shall be paid at any time to any person claiming under a contract with the board until such person shall have first filed with the board, his statement under oath, disclosing the names of all persons, directly or indirectly, interested in the contract, or in the proceeds or profits thereof, declaring that no person other than those named, are interested, and that no person forbidden by this chapter has any interest in the same. [68 v. 100, § 6.]

Contracts without approval of council.

SEC. 19. In cases where the board may contract without the approval of the council, it may, in its discretion, purchase the necessary material and employ the necessary overseers and hands to do the work; and council may also, in special cases, on the recommendation of the board, authorize any work, no part of which is to be paid by assessment, to be done in the same manner. [73 v. 43, § 8]

Power of council to authorize work.

Contracts only modified by order of board.

SEC. 20. When it becomes necessary, in the opinion of the board, in the prosecution of any work, to make alterations or modifications in the specifications or plans of a contract, such alteration or modification shall only be made by order of the board, and such order shall be of no effect until the price to be paid for the same has been agreed upon in writing, and signed by the contractor and some person authorized thereunto by the board; provided the total cost of the work, with the addition of the price, so agreed upon, shall not exceed the original estimate. [73 v. 45, § 9]

Cost not to exceed original estimate.

As to payment for extra work.

SEC. 21. No contractor shall be allowed anything for extra work caused by any alteration or modification, unless an order is made or agreement signed, as provided in the preceding section, nor shall he, in any case, be allowed more for such alteration than the price fixed by such agreement. [73 v. 45, § 9.]

To publish resolutions declaring necessity of improvement.

SEC. 22. The board shall publish all resolutions declaring the necessity of improvements; but the ordinance authorizing the improvement must be passed by council on the recommendation of the board. [73 v. 45, § 10.]

Grant of use of street—when recommendation of board essential.

SEC. 23. No grant of the use of a street or highway in such city for the purpose of a street or other railroad, or an extension thereof, shall be made or renewed unless first recommended by the board; nor shall any such street or highway be used for supplying gas or water, or be broken up or obstructed for any purpose or on any pretense whatever, unless permission is first given by the board and attested by its clerk, in writing; nor shall a resolution or ordinance for the

Board first to recommend payment of damages, etc.

payment of money in settlement of claims for unliquidated damages be passed, nor shall any binding agreement for such settlement be made by the common council, unless the payment or settlement of such claim be first recommended by the board; nor shall any property used or to be used for purposes under the control of the board, or for purposes of the city, be purchased, leased, or disposed of, without such recommendation being first made. [73 v. 46, § 12.]

Ordinances for payment of money; when recommendation of board essential to validity.

SEC. 24. No resolution or order in which the expenditure of money is involved, ordinance, resolution, or order for the expenditure of money, nor contract for the payment of money, or for granting any franchise, or creating any right, or for the purchase, lease, sale, or the transfer of property, which shall have passed the common council, except such as levying special taxes for the improvement of streets, shall take effect, until approved by four members of the board; and for such final approval every such ordinance, resolution, order, or contract, shall be submitted to the board, after being approved by the mayor, or after being recommended and passed by the council, if disapproved by the mayor. [73 v. 46, § 13.]

How and for what cause members of board may be removed.

SEC. 25. A member of the board may be removed from office for incompetency, inefficiency, neglect of duty, or unfaithfulness of trust, by a vote of two-thirds of all the members elected to the board of aldermen of such city; and all vacancies in the board otherwise than by expiration of the term for which such member was elected, shall be filled by appointment, to be made by the court of common pleas of the county in which such city is situated, until the next

Vacancies.

municipal election, at which time, the vacancy for the unexpired term shall be filled by election as herein provided, and the members of the board now in office shall serve until the expiration of their terms as heretofore fixed, unless a vacancy sooner occurs. [73 v. 46, § 14.]

Revenues of water-works, how expended.

SEC. 26. The revenues of the water-works shall be expended by the board. Contracts for water-works purposes shall be made by it only, and from said revenues the board shall pay the interest upon any bonds heretofore or hereafter issued by the city for water-works purposes, after the expenditure of the amount raised by the current levy of taxes to pay interest upon such bonds. [73 v. 46, § 15.]

The acts, 73 v. 212 and 74 v. 105, unaffected.

SEC. 27. Nothing in this title contained shall be construed to repeal the acts of 1876 and 1877, 73 v. 211–214 and 74 v. 105–107, or affect any contracts now or hereafter made, or acts done or to be done by the board under said acts.

CHAPTER 3.

APPROPRIATION BY CITIES AND VILLAGES OF PRIVATE PROPERTY TO PUBLIC USE.

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1. Purposes for which private property may be appropriated.
2. Additional purposes for which appropriation may be made.
3. Concurrence of two-thirds of council necessary for condemnation, etc.
4. Declaration of purpose to appropriate, etc.
5. Application to court, etc.
6. Service of notice on property owners.
7. Court to fix time for inquiry, etc.
8. Special term of court may be held.
9. How jurors drawn in probate court.
10. Inquiry to be at time fixed.
11. View of premises may be required.
12. Guardian ad litem for infants, etc.
13. Maps, plats, etc., may be required of corporation.
14. How jury to return assessment; open and close of case.

SECTION
15. Verdict in whole or in part.
16. Order as to payment or deposit.
17. Time and manner of delivery of property.
18. Costs—how paid.
19. No delay from doubt of ownership.
20. Interested parties may give bond, etc.
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22. When execution of order may be suspended.
23. Appeal to court of common pleas.
24. Nature of appeal and undertaking.
25. As to appeal by guardian, married woman, etc.
26. Probate judge to furnish transcript, etc.
27. Original papers may be used.
28. Corporation not to appeal, etc.
29. Effect of neglect to take possession in six months.
30. Provisions of chapter applicable to hamlets.

SECTION 1. Each city and village may appropriate, enter upon, and hold real estate within its corporate limits for the following purposes, but no more shall be taken or appropriated than is reasonably necessary for the purpose to which it is to be applied: Purposes for which private property may be appropriated.

1. For opening, widening, straightening, and extending streets, alleys, and avenues; also for obtaining gravel or other proper material for the improvement of the same; and for this purpose the right to appropriate shall not be limited to lands lying within the limits of the corporation. Streets.

2. For market space. Market space.

3. For buildings and structures required for the use of the fire department. Fire department.

4. For public halls and necessary offices. Halls.

5. For prisons. Prisons, etc.

6. For infirmaries.

7. For work-houses.

8. For houses of refuge and correction.

9. For public hospitals. Hospitals.

10. For public parks; and for this purpose the right to Parks.

appropriate shall not be limited to land lying within the corporation.

Gas and water works.

11. For gas works.

12. For water works; and for this purpose the right to appropriate shall not be limited to lands lying within the corporation.

School-houses and universities.

13. For school-house sites and grounds; and for this purpose the board of education shall select the site and recommend the appropriation; and for university sites and grounds, and for this purpose the board of directors of a university whose property is exclusively owned, and whose directors are appointed by the municipal corporation, shall select the site and recommend the appropriation.

Cemeteries.

14. For public cemeteries; for which purpose the right to appropriate shall not be limited to lands lying within the corporation; but no land shall be appropriated under this provision until the court is satisfied that suitable premises can not be obtained by contract upon reasonable terms; and no lands shall be appropriated upon which there may be a dwelling house, barn, stable, or other farm building, or orchard, or nursery, or valuable mineral or other medicinal spring or well actually yielding oil or salt water; nor shall land be appropriated for such purpose within two hundred yards of a dwelling-house.

Wharves, levees, etc.

15. For public wharves and landings on navigable waters.

16. For levees to protect against floods; and for this purpose the corporation shall have power to appropriate, enter upon, and take private property lying outside of the corporate limits, and may extend and strengthen its levees and embankments along a river or stream adjacent to the limits of the corporation, and may widen the channel of such river or stream.

Bridges.

17. For necessary bridges.

Canals.

18. For constructing, opening, excavating, improving, deepening, enlarging, straightening, and extending any canal, ship-canal, or water-course, located in whole or in part within the limits of the corporation, which is not owned in whole or in part by the state, or by a company or individual authorized by law to make such improvement.

Sewers, etc.

19. For sewers, drains, and ditches; and for this purpose the corporation shall have power to appropriate, enter upon, and take private property lying outside of the corporate limits.

Water-closets, etc.

20. For public urinals, water-closets, and privies.

21. For lighting any public use. [70 v. 159, § 507.]

Additional purposes for which appropriation may be made.

SEC. 2. The power to appropriate may also be exercised for the purpose of opening or extending streets or alleys across railway tracks, and lands held or owned by railway companies, where such appropriation will not unnecessarily interfere with the reasonable use of such road or land by the railway company; such power may also be exercised where

it is necessary to acquire the right of way to, or additional ground for, the enlargement or improvement of the public works herein specified; and whenever material is required for the construction, improvement, or repair of any such works, the corporate authorities are empowered to appropriate and take the same, and for this purpose they may go outside the corporate limits. [70 v. 175, § 508.]

Concurrence of two-thirds of council necessary for condemnation, etc.

SEC. 3. No improvement requiring proceedings for the condemnation of private property shall be made without the concurrence in the by-law, ordinance, or resolution directing the same, of two-thirds of the whole number of the members elected to the council. [66 v. 236, § 511.]

Declaration of purpose to appropriate, etc.

SEC. 4. When it is deemed necessary by a municipal corporation to appropriate private property, as hereinbefore provided, the council shall, by resolution, declare such intent, defining therein the purpose of the appropriation, and setting forth a pertinent description of the property designed to be appropriated; and on the passage of such resolution, the yeas and nays shall be taken and entered on the record of the proceedings of the council. [66 v. 236, § 512.]

Application to court, etc.

SEC. 5 Upon the passage of the resolution by the requisite majority, application in writing shall be made to the court of common pleas of the proper county, or to a judge thereof in vacation, or to the probate court of the county, which application shall describe, as correctly as possible, the property to be taken, the object proposed, and the name of the owner of each lot or parcel of the property. [66 v. 236, § 513.]

Service of notice to owners of property.

SEC. 6. Notice of the time and place of such application shall be given personally in the ordinary manner of serving legal process, to all the owners or agents of the owners of the property sought to be appropriated, resident in the state, whose place of residence is known; and to all others, by publishing the substance of the application, with a statement of the time and place at which it is to be made, for three weeks next preceding the time of the application, in some newspaper of general circulation in the county. [72 v. 25, § 514]

Court to fix time for inquiry, etc.

SEC. 7. If it appear to the court or judge that such notice has been served five days before the time of the application, or has been published as provided in the preceding section, and that such notice is reasonably specific and certain, the court or judge may set a time for the inquiry into and assessment of compensation, by a jury of twelve men, unless all the parties agree upon a less number, who shall be duly sworn to discharge that duty. [66 v. 236, § 515]

Special term of court may be had.

SEC. 8. If the application be in the court of common pleas, and such court is not in session on the day fixed for the inquiry and assessment of compensation, the judge of the court of common pleas of the subdivision in which the property is situated, or in case of his absence, interest, or disability, any other judge of the court within the district,

shall hold a special term of court for the purpose of hearing and determining such inquiry and assessment, and shall direct a jury to be summoned for the purpose of making such inquiry, in the same manner that petit jurors are summoned in the court of common pleas for other purposes. [66 v. 237, § 516]

How jurors drawn in probate court.

SEC. 9. If the application be in the probate court, the clerk of the court of common pleas of the county shall, on the day fixed for the application, in the presence of the probate judge, draw twelve names, or such less number as may be agreed upon by the parties, from the box containing the names of persons selected as jurors for the county; and the persons so drawn shall be summoned and serve as the jury, unless excused or set aside by the court for good cause shown; and if, for any cause, the panel is not full, the probate judge shall fill the same from the bystanders. [66 v. 237, § 517.]

Inquiry to be at time fixed.

SEC. 10. The inquiry and assessment shall be made at the time appointed, unless, for good cause, continued to another day. [66 v. 237, § 518]

View of premises may be required.

SEC. 11. A view of the premises shall be ordered, when desired by the jury, or demanded by a party interested in the proceeding. [66 v. 237, § 519]

Guardian ad litem for infants, etc.

SEC. 12. If, at the time of such application, it appear that any of the owners of the property sought to be appropriated are infants, or insane, and that they have no guardian, a guardian ad litem shall be appointed to act in their behalf. [66 v. 237, § 520]

Maps, plats, etc., may be required of corporation.

SEC. 13. The corporation may be required to file a more full and accurate description of the property to be taken, and the object proposed, and maps, plats, and surveys, if, in the opinion of the court, the same are necessary and proper. [66 v. 237, § 521.]

How jury to return assessment.

SEC. 14. The assessment shall be in writing, signed by the jury, and shall be so made that the amount payable to each owner may be ascertained, either by allotting it to each owner by name, or on each lot or parcel of land; the owners shall have the right to open and close the case in the introduction of evidence and the argument, but not more than two counsel shall be heard for the city or the owners of any separate lot or tract, unless the court, for good cause, directs otherwise; and the inquiry and assessment shall, in other respects, be made by the jury, under such rules and regulations as shall be given by the court. [66 v. 237, § 522.]

Open and close of case.

Verdict in whole or in part.

SEC. 15. The jury shall be sworn to make the whole inquiry and assessment, but may be allowed to return a verdict as to part, and be discharged as to the rest, in the discretion of the court; and in case a jury is discharged from rendering a verdict in whole or in part, another shall be drawn and impaneled at the earliest convenient time, who shall make the whole inquiry and assessment, or the part not made, as the case may be. [66 v. 237, § 523.]

Orders as to payment or deposit of assessment.

SEC. 16. When the assessment has been made by the jury, the court shall make such order as to payment or deposit by the corporation as may seem proper; such order shall designate the time and place of payment or deposit, the persons entitled to receive payment, and the proportion payable to each; and the court may require adverse claimants for any part of the money or property, to interplead, and fully determine their rights in the same proceeding. [66 v. 234, § 524.]

Time and manner of delivery of property.

SEC. 17. The court may direct the time and manner in which possession of the property condemned shall be taken or delivered, and may, if necessary, enforce any order giving possession. [66 v. 238, § 525.]

Costs, how paid.

SEC. 18. The costs occasioned by the inquiry and assessment shall be paid by the corporation, and the other costs which may arise shall be charged or taxed as the court in its discretion may direct. [66 v. 238, § 526.]

No delay from doubt of ownership.

SEC. 19. No delay in making an assessment of compensation, or in taking possession, shall be occasioned by any doubt which may arise as to the ownership of the property, or any part thereof, or as to the interests of the respective owners; but in such cases the court shall require a deposit of the money allowed as compensation for the whole property, or the part in dispute; and in all cases, as soon as the corporation shall have paid the compensation assessed, or secured its payment by a deposit of money under the order of the court, possession of the property may be taken, and the public work or improvement progress. [66 v. 238, § 527.]

Interested parties may give bond, etc.

SEC. 20. Any person interested in the appropriation of private land for a street, alley, or public highway, may, before or after the passage of an ordinance for the opening of such street, alley, or public highway, or before or after application to the court, execute his bond, payable to the corporation, to the acceptance of the council, conditioned for the payment of all damages which may be assessed by the jury; and such bond shall be good in law, and if such bondsmen pay or deposit according to the order of the court, then such street, alley or highway shall be opened; or the corporation may, at its discretion, make such payment or deposit, and collect by law the amount of such damages of such bondsmen, with or without costs, as the court may direct. [66 v. 238, § 528.]

Review of proceedings.

SEC. 21. Whoever, being directly interested, feels aggrieved by the verdict or finding or any decision or judgment of the probate court or court of common pleas in any such proceeding, shall have remedy by motion for new trial and petition in error, as in other cases. [66 v. 238, § 529.]

When execution of order may be suspended.

SEC. 22. When such petition is filed, the court of common pleas, or probate court, as the case may be, may suspend the execution of any order which may have been made, on such terms as may be deemed proper, and may require a

bond with security for the payment of any damages or costs which may be thereby occasioned; but in all cases where the municipal corporation pays or secures by a deposit of money the compensation assessed by the jury, and gives such security as may be deemed adequate to pay any further compensation and all damages and costs which may be thereafter adjudged, the right to take and hold the property condemned shall not be affected by any such review. [66 v. 239, § 530.]

Appeal to court of common pleas.

SEC. 23. Where the proceeding is had in the probate court, any party interested in the inquiry and assessment may take an appeal to the court of common pleas; and thereupon the same proceedings shall be had as if the application had been originally made in that court, except that the corporation shall not be required to give notice of its application, and the inquiry and assessment shall be limited to the case of the party taking the appeal; and the court shall make such order for the payment of the costs accruing upon the appeal as may seem equitable and just. [66 v. 239, § 531.]

Nature of appeal, and undertaking.

SEC. 24. The party desirous of appealing, shall, within ten days after the date of the final order determining the rights of such party, file with the probate judge notice of his intention to appeal; and shall further, within twenty days after the making of the order, give a written undertaking to the adverse party, with one or more sufficient sureties to be approved by the probate judge, conditioned that the party appealing shall abide by and perform the order, judgment or decree of the appellate court, and pay all costs or moneys which may be awarded against such party by the appellate court. [66 v. 239, § 532.]

As to appeal by guardian, married woman, etc.

SEC. 25. When the appeal is taken by a person as guardian, executor, or administrator, who has given bond as such in the state, no undertaking shall be required from such guardian, executor, or administrator; and when an appeal is taken by a married woman, her liability shall be the same as if she had been sole. [66 v. 239, § 533.]

Probate judge shall furnish transcript, etc.

SEC. 26. The probate judge shall, upon the giving of the undertaking as provided in section twenty-four, or upon the filing of notice of the intention to appeal where no undertaking is required, prepare an authenticated transcript of the docket or journal entries, and of the order or decision appealed from, which shall be forthwith filed with the clerk of the court of common pleas by the person appealing, and the appeal shall thereupon be considered perfected; and if the transcript is not filed within thirty days after the date of the undertaking, or of the filing of the notice of intention to appeal where no undertaking is required, the party shall be deemed to have waived an appeal. [66 v. 239, § 534.]

Original papers may be used.

SEC. 27. The original papers pertaining to the proceeding may be used upon the hearing or inquiry in the court of common pleas, and shall be transmitted by the probate judge for that purpose. [66 v. 240, § 535.]

Corporation not to appeal, etc.

SEC. 28. The municipal corporation shall have no right of appeal; nor shall it prosecute error, except upon leave of the reviewing court or a judge thereof. [66 v. 240, § 536.]

Effect of neglect to take possession in six months.

SEC. 29. When a municipal corporation makes an appropriation of land for any purpose specified in this chapter, and fails to pay for or take possession of the same within six months after the assessment of compensation shall have been made, as hereinbefore provided, the right of the corporation to make such appropriation on the terms of the assessment so made, shall cease and determine; and any lands so appropriated shall be relieved from all incumbrance on account of the proceeding in such case, or the resolution of the council making the appropriation; and the judgment or order of the court, directing such assessment to be paid, shall cease to be of any effect, except as to the cost adjudged against the corporation. [66 v. 240, § 537.]

Provisions of this chapter applicable to hamlets.

SEC. 30. In cases in which hamlets are authorized to appropriate private property, the proceedings shall conform, as far as practicable, to the provisions of this chapter. [66 v. 240, § 538.]

CHAPTER 5. [4.]

ASSESSMENTS: HEREIN ALSO OF FURTHER PROVISIONS AS TO MAKING IMPROVEMENTS.

SUBDIVISION I. *Assessments in general.*
SUBDIVISION II. *Damages.*
SUBDIVISION III. *Sidewalks and watercourses.*
SUBDIVISION IV. *Special provisions as to assessments in Columbus.*
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SUBDIVISION I. ASSESSMENTS IN GENERAL.

What assessments shall be levied on all taxable property.

SECTION 1. The council shall, when in its opinion necessary, and also when it becomes its duty, levy and assess, upon the general tax-list, an assessment on all taxable real and personal property in the corporation, for the payment of the cost and repair of the following improvements, including the cost of the necessary real estate therefor, that is, for public halls and necessary offices, structures for the fire department, water-works, market-houses and spaces, cemeteries, parks, infirmaries, hospitals, gas-works, prisons, houses of refuge and correction, work-houses, public privies and urinals, wharves and landings on navigable rivers, levees and embankments. [70 v. 127, § 539.]

Assessments which may be levied on all taxable property.

SEC. 2. When the corporation appropriates, or otherwise acquires lots or lands for the purpose of laying off, opening, extending, straightening, or widening a street, alley, or other public highway, the council may assess the cost and expenses of such appropriation or acquisition, and of the improvement, or of either, or of any part of either, upon the general tax-list, in which case the same shall be an assessment on all the taxable real and personal property in the corporation. [70 v. 127, § 539.]

Assessments which may be special.

SEC. 3. In the cases provided for in the last section, the council may decline to assess the costs and expenses therein mentioned, or any part thereof, except as hereinafter mentioned, on the general tax-list, in which event such cost and expenses, or any part thereof which may not be so assessed on the general tax list, shall be assessed by the council on the abutting, and such adjacent and contiguous or other benefited lots and lands in the corporation, either in proportion to the benefits which may result from the improvement, or according to the value of the property assessed, or by the feet front of the property abutting upon the improvement, as the council, by ordinance setting forth specifically the lots and lands to be assessed, may determine, before the improvement is made, and in the manner, and subject to the restrictions, herein contained; and the assessments shall be payable in one or more installments, and at such times as council may prescribe; but this section shall be subject to the provisions of chapter two, of this division. [70 v. 127, § 539; 67 v. 82, § 576; 66 v. 247, §§ 577, 578, 579.]

How made.

When payable.

General assessment, how certified to auditor.

SEC. 4. In the cases provided for in the first and second sections of this chapter, the clerk of the corporation shall certify the levy and assessment to the auditor of the county, who shall place the same on the tax-list against such taxable property, and the same shall be collected as other taxes. [70 v. 127, § 539.]

Exception as to platted lands.

SEC. 5. Section three of this chapter shall be subject to this further provision, that in cities which have a platting commission, and in cities where the duties of such commission have been devolved upon a board of public works, and

wherein such commission or board has platted, or may plat streets or highways, agreeably to the provisions of this title, and the owner of any portion of the grounds so platted shall have accepted such platting agreeably to the provisions of the twelfth chapter of the eighth division of this title, as there or originally enacted, the property upon any street or public way so platted and dedicated, shall not be assessed to pay for the extension of such street or highway, or for opening the same through other lands so platted but not dedicated. [70 v. 127, § 539.]

When two-thirds vote requisite.

SEC. 6. No public improvement, the cost or part of the cost of which is to be specially assessed on the owners of adjacent property, and no order appointing assessors of damages, or confirming their report, shall be made without the concurrence of the council, and it shall be essential that two-thirds of the whole number of the members elected to the council concur, unless two thirds of the owners to be charged petition in writing therefor; and in villages having a less population than four thousand, at the federal census of eighteen hundred and seventy, not situate in a county containing a city of the first class, no special assessment shall be made, except for sidewalks, unless it first receive the assent in writing of a majority of the owners to be charged therewith. [70 v. 63, § 540.]

Assessment on owner of life estate.

SEC. 7. When a special assessment is made on real estate subject to a life estate, the assessment shall be payable by the tenant for life; but upon application by the life tenant to a court of competent jurisdiction, by action against the owner of the estate in fee, such court may apportion the cost of the assessment between the life tenant and the owner in fee, in proportion to the relative value of the improvement to their estates, respectively, to be ascertained and determined by the court on principles of equity. [67 v. 80, § 541.]

Rules of assessment.

SEC. 8. In making a special assessment according to valuation, the council shall be governed by the assessed value of the lots, if the land is subdivided and the lots are numbered and recorded; but if the lots are not assessed for taxation, or there is land not subdivided into lots, the council shall fix the value of such lots, or the value of the front of such land to the usual depths of lots, by the average of two blocks, one of which shall be next adjoining, on each side; and if there are no blocks so adjoining, the council shall fix the value of the lots or lands to be assessed, so that it will be a fair average of the assessed value of other lots in the neighborhood; and if in making a special assessment by the front foot there is land abutting upon the improvement not subdivided into lots, the council shall fix in like manner, the front of such land to the usual depth of lots, so that it will be a fair average of the depth of lots in the neighborhood which shall be subject to such assessment. [66 v. 241, § 542.]

Limit of assessment in municipal corporations other than cities of first class.

SEC. 9. In municipal corporations other than cities of the first class, or in corporations in counties containing a city of the first grade of the first class, the tax or assessment specially levied and assessed on any lot or land, for any improvement, shall in no case amount to more than twenty-five per centum of the value of the property as assessed for taxation, and the cost exceeding that per centum shall be paid by the corporation, out of its general revenue; and there shall not be collected of such assessments, in any one year, more than one-fifteenth of the value of the property on which the assessment was made, as valued in the county tax list for taxation. [73 v. 171, § 543; 73 v. 222, § 648.]

Limitation on assessment in cities of first class.

SEC. 10. In cities of the first class, or in corporations in counties containing a city of the first grade of the first class, the tax or assessment specially levied or assessed upon any lot or land, for any improvement, shall not, except as provided in the next section, exceed twenty-five per centum of the value of such lot or land, and the cost exceeding that per centum shall be paid by the corporation out of its general revenue; and, except as provided in the next section, there shall not be collected of such assessment, in any one year, more than one-tenth of the value of the property on which the assessment was made; but in making such assessment, regard may be had to the value of such lot or land after the improvement is made. [73 v. 171, § 543.]

As to limitations in cities of the first class where three-fourths in interest petition.

SEC. 11. In cities of the first class, or in corporations in counties containing a city of the first grade of the first class, when a petition, subscribed by three fourths in interest of the owners of property abutting upon any street or highway of any description, is regularly presented to the council for the purpose, the cost of any improvement of such street or highway may be assessed and collected in equal annual installments, proportioned to the whole assessment, in a manner to be indicated in the petition, or if not so indicated, then in the manner which may be fixed by council; and the interest on any bonds issued for the improvement, by the corporation, shall be assessed, together with the annual installments herein provided for, upon the property so improved; but where the lot or land of one who did not subscribe the petition is assessed, such assessment shall not exceed twenty-five per cent. of the value of his lot or land after the improvement is made: provided, that whenever in this title the petition of the owners of property is required a married woman shall have the same authority to sign that she would have if unmarried; and guardians of infants or insane persons may sign such petition on behalf of their wards, only when expressly authorized by the probate court, on good cause shown. [73 v. 171, § 543.]

SEC. 12. In all cities, except those of the third grade of the first class, the corporation shall pay such part of the costs and expenses of each improvement as to the council may

seem equitable and just, which part shall not be less than one-fiftieth of all such costs and expenses, and the same shall be certified by the corporation clerk to the county auditor, and levied on all taxable property in the corporation, and collected as other taxes. [73 v. 24, §§ 171 247, 543, 581, 590.]

Must be general levy in all cases for part of cost.

SEC 13. When the council of a city, except in cities of the first and third grades of the first class, determines to grade, pave, or otherwise improve a street, alley, or other public highway, and the improvement crosses or intersects another street, alley, or public highway, the council shall levy and assess a tax, in addition to that specified in the last section, upon the general tax list of all the taxable real and personal property in the corporation, for the estimated cost and expense of so much of the improvement as may be included in the crossing or intersection of such street, alley, or highway, which amount the corporation clerk shall certify to the county auditor, and the same shall be enforced against such real and personal property as other taxes are enforced and collected. [*Ib.*]

As to intersections.

SEC. 14. For the purposes of assessment, a city of the first grade of the first class shall in all cases be considered a property owner as to the intersections, and any other property belonging to the corporation abutting on the street or highway so improved; and the assessment chargeable to the corporation, together with at least one fiftieth part of all costs and expenses, as provided for in the twelfth section of this chapter, shall be included in any bonds issued for the improvement, and be paid by it in like manner as by other property owners. [*Ib.*]

Intersections in Cincinnati.

Other property of corporation in Cincinnati.

SEC. 15. When the whole or any portion of an improvement authorized by this title passes by or through a public wharf, market space, park, cemetery, structure for the fire department, water-works, school building, infirmary, market building, work-house, hospital, house of refuge, gas-works, public prison, or any other public structure or public grounds within and belonging to the corporation, the council may authorize the proper proportion of the estimated costs and expenses of the improvement to be certified by the clerk of the corporation to the county auditor, and entered upon the tax list of all the taxable real and personal property in the corporation, and the same shall be collected as other taxes. [66 v. 248, § 582.]

Assessment on property of the corporation.

SEC. 16. In cases wherein it is determined to assess the whole or any part of the cost of an improvement upon the lots or lands bounding or abutting upon the same, or upon other lots or lands benefited thereby, as provided in section three of this chapter, the council may require the board of improvements, or board of public works, as the case may be, or may appoint three disinterested freeholders of the corporation or vicinity, to report to the council an estimated assessment of such cost on the lots or lands to be charged

Report of estimate of assessments.

therewith, in proportion, as nearly as may be, to the benefits which may result from the improvement to the several lots or parcels of land so assessed, a copy of which assessment shall be filed in the office of the clerk of the corporation for public inspection. [66 v. 248, § 584.]

Notice of assessment to be published.

SEC. 17 Before adopting the assessment so made, the council shall publish notice for three weeks consecutively, in some newspaper of general circulation in the corporation, that such assessment has been made, and that the same is on file in the office of the clerk for the inspection and examination of persons interested therein. [66 v. 248, § 585.]

Objections to assessments to be filed.

SEC. 18. If any person objects to the assessment, he shall file his objections, in writing, with the clerk, within two weeks after the expiration of the notice; and thereupon the council shall appoint three disinterested freeholders of the corporation to act as an equalizing board. [66 v. 249, § 586.]

Duties of equalizing board.

SEC. 19. On a day appointed by the council for that purpose, the board, after taking an oath before a proper officer, honestly and impartially to discharge their duties, shall hear and determine all objections to the assessment, and equalize the same, as they may think proper; which equalized assessment they shall report to the council, which shall have power to confirm the same, or set it aside, and cause a new assessment to be made, and appoint a new equalizing board possessing the same qualifications, which shall proceed in the manner above provided. [66 v. 249, § 587.]

Confirmed assessment final.

SEC. 20. When the assessment is confirmed by the council, it shall be complete and final. [66 v. 249, § 588.]

Concurrence of two-thirds requisite to appoint board.

SEC. 21. A concurrence of two thirds of the members of the council shall be necessary in appointing the equalizing board, and in confirming its assessment. [66 v. 249, § 589.]

Double assessment.

SEC. 22. Special assessments, whether by the feet front or otherwise, shall be so restricted that the same territory shall not be assessed for making two different streets or avenues, within a period of five years, in such amounts that the maximum assessment herein provided will be thereby exceeded; and so far as practicable under the provisions of this title, regard must be had, in making special assessments, to the probable benefits to the property assessed.

Benefits to be regarded.

What shall be estimated as cost of improvement.

SEC. 23. The cost of any improvement contemplated in this chapter shall include the purchase money of real estate, or of any interest therein, where the same has been acquired by purchase, or the value thereof as found by the jury, where the same has been appropriated, the costs and expenses of the proceeding, the damages assessed in favor of any owner of adjoining lands, the costs and expenses of the assessment, the expense of the preliminary and other surveys, and of printing, publishing the notices and ordinances required, including notice of assessment, and any other necessary expenditure, and the cost of construction. [66 v. 241, § 544.]

Lien from date of assessment.

SEC. 24. Special assessments shall be payable by the owners of the property assessed personally, by the time stipulated in the ordinance providing for the same, and shall be a lien from the date of the assessment upon the respective lots or parcels of land assessed. [66 v. 242, § 545]

Assessment and penalty recovered by suit.

SEC. 25. If payment is not made by the time stipulated, the amount assessed, together with interest, and a penalty of five per cent. thereon, may be recovered by suit before a justice of the peace, or other court of competent jurisdiction, in the name of the corporation, against the owner or owners; but the owner shall not be liable, under any circumstances, beyond his interest in the property assessed, at the time of the passage of the ordinance or resolution to improve. [66 v. 242, § 546]

Lien may be enforced against all owners, or a part, etc.

SEC. 26. Proceedings for the recovery of the assessment may be instituted by the corporation against all the owners, or each or any number of them; or to enforce the lien, against all the lots or lands, or each lot or parcel, or any number of them embraced in any one assessment; but the judgment or decree shall be rendered severally or separately for the amount assessed; and any proceeding may be severed, in the discretion of the court, for the purpose of trial, review, or appeal where an appeal is allowed. [66 v. 242, §§ 547, 549]

Lien as to non-resident owner.

SEC. 27. In proceedings to enforce the lien, when the owner of any lot or land assessed is a non-resident of the state, or is unknown, notice shall be given by publication in the manner prescribed by law in similar cases. [66 v. 242, § 548.]

Costs in case of error or defect in proceedings.

SEC. 28. In every such action the court shall disregard any technical irregularity or defect, whether in the proceedings of the board of improvements or of the council, or of any officer of the corporation, or in the plans or estimates; and the acceptance of the work by the council on the certificate of the engineer, shall be presumptive evidence that the contract has been complied with, but a substantial defect in the construction of the improvement shall be a complete defense. [66 v. 242, § 550]

When re-assessment may be ordered.

SEC. 29. When it appears to the council that a special assessment is invalid, by reason of informality or irregularity in the proceedings, or when an assessment is adjudged to be illegal, by a court of competent jurisdiction, the council may order a re-assessment, whether the improvement has been made or not. [66 v 242, § 551]

Proceedings upon re-assessment.

SEC. 30. Proceedings upon a re-assessment, and for the collection thereof, shall be conducted in the same manner as is provided for the original assessment. [66 v. 242, § 552]

Assessment for lighting street, etc.

SEC. 31. For the payment of the cost of lighting the corporation, the council may by ordinance levy and assess a tax in proportion to the feet front on the lots and lands bounding or abutting on the streets and avenues lighted; and all the provisions of this chapter concerning special

assessments and the collection thereof, which in their nature are applicable, shall apply to assessments for this purpose. [67 v. 82, § 576]

Assessment for repaving, etc.

SEC. 32. If the costs and expenses of improving a street, alley, or other public highway have been paid by the abutting property owners, and, the grade remaining unchanged it becomes necessary to repave such street, alley, or highway, one half of the costs and expenses of such repaving shall, if the council deem it just, be placed on the general tax list of all the taxable property in the corporation, and collected as other taxes are collected, and applied to such cost and expense of repaving. [66 v. 247, § 580]

Special duty of courts.

SEC. 33. The court of common pleas and superior courts shall have the jurisdiction authorized by this chapter for the collection of any charge or debt, or the inforcement of any lien, notwithstanding the amount involved shall be less than that to which the jurisdiction is limited in other cases; and those courts may make such special rules concerning the class of cases authorized to be brought under this chapter as will tend to expedite their disposition, and prevent unnecessary costs. [66 v. 242, § 553.]

Certificate of unpaid assessment to auditor.

SEC. 34. The council may order the clerk or other proper officer of the corporation to certify, under his official seal, any unpaid assessment or tax to the auditor of the county in which the corporation is situated, and the amount of such assessment or tax so certified shall be placed upon the tax list by the county auditor, and shall, with ten per cent. penalty to cover the interest and expense of collection, be collected with and in the same manner as state and county taxes, and credited to the corporation. [66 v. 243, § 554]

Payment and application of assessments.

SEC. 35. Assessments placed upon the tax list, under the provisions of this chapter, shall, when collected, be paid to the treasurer of the corporation, and be applied by the council only to the purposes of the improvement for which they were made. [66 v. 243, § 555.]

Duration of lien, etc.

SEC. 36. The lien of an assessment shall continue two years from the time the same is payable, and no longer, unless the corporation shall, before the expiration of the time, have caused the same to be certified to the auditor of the proper county, for entry upon the tax list for collection, or shall have caused the proper action to be commenced in some court having jurisdiction thereof, to enforce such lien against such lots or lands, in which case the lien shall continue in force so long as such assessment remains on the tax list uncollected, or so long as such action is pending, and any judgment obtained, under and by virtue thereof, remains in force and unsatisfied. [66 v. 243, § 556.]

When new action may be commenced.

SEC. 37. If an action is commenced within due time, and a judgment therein for the plaintiff is reversed, or if the plaintiff fails in such action otherwise than upon the merits, and the time limited for the same has expired, a

new action may be commenced within one year after such reversal or failure. [66 v. 243, § 557.]

Collection of assessment in advance.

SEC. 38. The council may, if it deems expedient, cause the assessments to be collected before the work is done or contracted for. [66 v. 243, § 558.]

Deficiency or excess of assessments.

SEC. 39. If an assessment proves insufficient to pay for the improvement and expenses incident thereto, the council may, under the limitations prescribed for such assessment, make an additional pro rata assessment to supply such deficiency; and in case a larger amount is collected than is necessary, the same shall be returned to the persons from whom it was collected, in proportion to the amounts collected from such persons respectively; but this section shall be subject to the limitations contained in other sections of this chapter. [66 v. 243, § 559.]

Change of grade after once established.

SEC. 40. When a street, alley, public highway, wharf, or landing, within the corporation is graded, or pavements are constructed in conformity to grades established by the authorities of the corporation, and the expense is assessed on the abutting lots or lands, the owners shall not be subject to any special assessment occasioned by any subsequent change of grade in such pavement, street, alley, public highway, wharf, or landing, unless a petition for such change is subscribed by a majority of the owners of such lots or lands; and the expense of all improvements occasioned by such change of grade shall be chargeable to the general fund of the corporation. [66 v. 243, § 560.]

Added territory.

SEC. 41. The provisions of this chapter shall embrace territory added to the corporation by annexation or otherwise. [66 v. 244, § 561.]

Proceedings in making improvements or repairs.

SEC. 42. When the corporation makes an improvement or repair provided for in this chapter, the cost of which will exceed five hundred dollars, it shall proceed as follows:

1. It shall advertise for bids for the period of two weeks or if the estimated cost exceeds five thousand dollars, four weeks, in two newspapers published in the corporation, or one newspaper, if only one is published therein, or by posting advertisements in three public places in the corporation, if no newspaper is published therein.

2. The bids shall be filed with the clerk, the board of improvements, or board of public works, as the case may be, sealed up, by twelve o'clock at noon, on the last day, as stated in the advertisement.

3. The bids shall be opened at the next regular meeting of the council, board of improvements, or board of public works, as the case may be, and publicly read by the clerk, and filed.

4. Each bid shall contain the full name of every person interested in the same, and shall be accompanied by a sufficient guaranty of some disinterested person, that if the bid is accepted a contract will be entered into, and the performance of it properly secured.

5. If the work bid for embraces both labor and materials, they shall be separately stated, with the price thereof.

6. None but the lowest responsible bid shall be accepted, when such bids are for the labor or materials separately; but the council may, in its discretion, reject all the bids, or it may, at its discretion, accept any bid for both labor and material, which may be the lowest aggregate cost of such improvement or repairs.

7. The contract shall be between the corporation and the bidder, and the corporation shall pay the contract price for the work in cash; provided, however, that the contract price may be paid in assessments, as the council in its discretion may have previously determined; and suits to recover or enforce such assessment may be brought in the name of the corporation.

8. If two or more bids are equal in the whole or any part thereof, and are lower than any others, either may be accepted, but in no case shall the work be divided between them.

9. When there is reason to believe there is collusion or combination among the bidders, or any number of them, the bids of those concerned therein shall be rejected. [70 v. 83, § 562.]

Notice of proposed improvement to be published.

SEC. 43. When it is deemed necessary by a city or village to make a public improvement, the council shall declare, by resolution, the necessity of such improvement, give twenty days' written notice of its passage to the owners of the property abutting upon the improvement, or to the persons in whose names it may be assessed for taxation upon the tax duplicate, who may be residents of the county, and publish the resolution not less than two nor more than four consecutive weeks, in some newspaper published and of general circulation in the corporation; provided, that when there is no newspaper published in such village, written notices shall be posted in twelve public places in said village; and all plans and profiles relating to the improvement shall be recorded and kept on file in the office of the city civil engineer or clerk, and open to the inspection of all parties interested; and council may appoint a person to serve the notice provided for by this section, who shall make a return of the time and manner of such service, and verify the same by affidavit, which shall be filed with the clerk of the corporation, and the same, or a certified copy thereof, shall be prima facie evidence of the service of the notice as therein stated; provided, that in cities of the first grade of the first class, the power to serve and publish such notice shall be vested in the board of public works, provided for in the second chapter of this division. [67 v. 81, § 563; 73 v. 43, § 10.]

Improvement on petition in city of second class or village.

SEC. 44. On the written petition of the owners of more than two-thirds of the feet front, on any street or alley, or part thereof, the council of a city of the second class or village may, after complying with the provisions of the pre-

ceding section, and subdivision two of this chapter, when the same are applicable, provide by ordinance for the improvement of such street or alley, or part thereof, in the mode set forth in such petition; provided, such improvement does not involve the condemnation and appropriation of real estate. [71 v. 72, § 435.]

Board to supervise such improvement.

SEC. 45. When such ordinance is enacted, the council of such city of the second class, or village, may designate two of the petitioners, who, with the corporation engineer, shall constitute a board, which, after the improvement shall have been contracted for by the council, according to the provisions of this chapter, shall supervise and control the execution thereof; all orders, reports, certificates, or acts required of the engineer, or made necessary during the progress of the work, shall be concurred in by a majority of the board; and the two petitioners selected by council shall act without compensation. [71 v. 72, § 435.]

Keeping street, etc., in repair, sprinkling, etc., in cities of second class and villages.

SEC. 46 On the written petition of the owners of more than two-thirds of the feet front on any street, or part thereof, the council of such city of the second class, or village, may provide by ordinance for keeping in repair, planting, and taking care of shade trees, sprinkling with water, and sweeping any street, or part thereof, which has been improved under any of the provisions of this chapter; and one or more of such objects may be embraced in one petition or ordinance, and may also be included in the petition and ordinance for the improvement of such street, or part thereof. [71 v 72, § 435.]

Who constitutes board for such purposes.

SEC. 47. The council may, in the ordinance referred to in the preceding section. designate two of the petitioners to act without compensation, who, with the corporation engineer, shall constitute a board, under whose supervision and direction the keeping in repair of such street or alley, or part thereof, planting and taking care of shade trees, and sprinkling of such street may be done. [71 v. 72, § 435.]

Power to contract.

SEC. 48. The board, in carrying out the purposes of such ordinance, may make such contracts as it deems best, but no contract shall be made for a longer period than one year. [71 v. 72, § 435.]

Sprinkling, etc., in cities of first class.

SEC. 49. On the written petition of the owners of not less than two-thirds of the feet front of the land fronting on any street or alley, or any specified part thereof, the council of any city of the first class may order such street, or specified part thereof, to be sprinkled with water at such times as council may deem proper; and such sprinkling may be done by contract in each case, or for the entire city, or specified part thereof, or may be performed by the city in connection with the street cleaning department. [71 v. 72, § 435.]

Expenses to be reported to council.

SEC. 50. The boards provided for in sections forty-five and forty-seven shall make an estimate of the expense to be incurred in making any improvement or repair, or performing any work they are selected to supervise, or of so much as may

be necessary in any one year, and report the same to council, which shall charge the same on the lots or lands abutting on such street, or part thereof, either according to the valuation of such lots or lands as listed for taxation, or by the feet front, which charge may be made by one or more assessments; the payment of such assessments, with interest, may be enforced by suit in the name of the corporation against the owners of such lots or lands, or if not paid, they may be certified to the county auditor, and shall be placed by him on the duplicate, and collected as other taxes; and the amount thus collected shall be a separate fund for the exclusive use for which it was assessed, and shall be paid out on the warrant of the city clerk, upon the approval of a majority of the board. [71 v. 72, § 436.]

And specially assessed.

Assessment for sprinkling in cities of first class.

SEC. 51. In cities of the first class, council may make assessments to pay the expense of sprinkling, on the lands abutting on such street, or specified part thereof, either on the valuation thereof, as listed for taxation, or by the foot front; and such assessment may be enforced by suit against the owner or occupant of such lands, or part thereof, or certified to the county auditor, and shall be placed on the county duplicate and collected by the county treasurer, as other taxes; provided, that this section shall not apply to premises held and used by any religious society exclusively as a place of public worship, unless such society shall have joined in the petition for such sprinkling. [71 v. 73, § 436.]

How enforced.

Assessment for sprinkling, etc., lien on land charged.

SEC. 52. Every such assessment shall be a lien on the lands charged from the time the council determines the amount assessed against each parcel of land. [66 v. 221, § 437.]

Expense of collecting to be added to assessment.

SEC. 53. In placing such assessment on the tax list, the county auditor is required to add to each assessment such per centum as he may deem necessary to defray the expenses of collecting the same. [66 v. 222, § 438.]

SUBDIVISION II. DAMAGES.

Claim for damages; effect of failure to file.

SEC. 54. An owner of a lot, or of land, bounding or abutting upon a proposed improvement, claiming that he will sustain damages by reason of the improvement, shall, within two weeks after the service or the completion of the publication of the notice mentioned in section forty-three of this chapter, file a claim, in writing, with the clerk of the corporation, setting forth the amount of the damages claimed, together with a general description of the property with respect to which it is claimed the injury will accrue; an owner who fails to do so shall be deemed to have waived the same, and shall be barred from filing a claim or receiving damages; and this provision shall apply to all damages which will obviously result from the improvement, but shall not deprive the owner of his right to recover other damages arising, without his fault, from the acts of the corporation, or its agents;

provided, that if subsequent to the filing of such claim, the owner sells the property, or any part the eof, the assignee shall have the same right to damages which the owner would have had without the transfer. [66 v. 245, § 564.]

Determination of council as to claims for damages.

SEC. 55. At the expiration of the time limited for filing claims for damages, as provided in the last section, the council shall determine whether it will proceed with the proposed improvement, or not; also whether the claims for damages filed as aforesaid shall be judicially inquired into, as hereinafter provided, before commencing, or after the completion of the proposed improvement; and if it decides to proceed therewith, an ordinance for the purpose shall be passed; and where provision as to damages is not made in this chapter, the provisions in chapter three of this division shall apply to the proceeding so far as they are applicable. [66 v. 245, § 565.]

Assessment of damages.

SEC. 56. When claims for damages are filed within the time limited, and the council, having passed an ordinance for making the improvement, determines that the damages shall be assessed before commencing it, the mayor or solicitor shall make written application for a jury, to the court of common pleas, or a judge thereof in vacation, or to the probate court of the county in which the corporation, or the larger part of it, is situated; and the court or judge shall direct the summoning of a jury, in the manner provided in chapter three of this division, and fix the time and place for the inquiry, and the assessment of such damages, which inquiry and assessment shall be confined to the claims filed as aforesaid, except as provided in section fifty-four. [67 v. 81, § 566.]

Proceedings of jury.

SEC. 57. The jury shall be sworn to inquire into and assess the actual damages in each case separately, under such rules and instructions as shall be given it by the court; and when the jury can not agree, it may be discharged; but the court may receive its verdict as to one or more of the claimants, and discharge it with respect to parties concerning whose claims it can not agree; and in case of the discharge of the jury because of disagreement as to any or all of the claims, a new jury shall be summoned, and the same proceedings shall be had, with respect to the claims concerning which there was no verdict, as on the original trial. [66 v. 246, § 567.]

Finding final.

SEC. 58. The finding of the jury shall be final, and there shall be no appeal. [66 v. 246, § 568.]

Costs of inquiry.

SEC. 59. In cases in which the jury finds no damages, the costs of the inquiry shall be taxed against the claimant, and be collected on execution; and in other cases the court shall render judgment on the verdict, and furnish the clerk of the corporation, on application, a statement of the amount of damages and costs in each case. [66 v. 246, § 569.]

SEC. 60. In all cases where the council determines to assess the damages after the completion of any improvement

Assessment after completion of improvement.

provided for by this chapter, for which a claim for damages has been filed as hereinbefore provided, the mayor or solicitor shall, within ten days after the completion of such improvement, make written application to the court of common pleas, or a judge thereof in vacation, or to the probate court of the county in which the corporation, or the larger part thereof, is situated, to summon a jury, in the manner pointed out in chapter three of this division, to assess the amount of damage in each particular case; and such court or judge shall fix the time and place of inquiry, and the assessment of damages, in the manner hereinbefore provided. [67 v. 82, § 570.]

Assessment where proceedings defective.

SEC. 61. Where, by reason of any defect or omission in the proceedings herein provided for, the corporation shall be liable in an action for damages to any lot or land, occasioned by the making of any improvement, the damages shall be ascertained and assessed by three disinterested freeholders of the corporation, to be appointed by the council. [66 v. 246, § 571.]

Oath of assessors of damages.

SEC. 62. The assessors, before entering upon their official duties, shall take and subscribe an oath, before a justice of the peace, or the mayor, that they will well and truly, to the best of their knowledge and ability, appraise the damages which the claimants have suffered by reason of such improvement, and for which the corporation is liable; which oath shall be filed in the office of the clerk. [66 v. 246, § 572.]

Duty of assessors of damages.

SEC. 63. The assessors shall, within thirty days after their appointment, make the assessment, and file the same in the office of the clerk, where it shall be subject to the inspection of all claimants for damages; the damages shall be paid out of the corporation treasury; and, within twenty days after the filing of the assessment herein mentioned, the treasurer shall pay, or tender, the same to the party in whose favor they were assessed. [66 v. 247, § 573.]

Costs in certain cases.

SEC. 64. If any person neglects or refuses to accept the amount of damages so assessed, and prosecutes the corporation, and does not recover more than the amount allowed by the assessors, such party shall pay all costs of suit. [66 v. 247, § 574.]

Time allowed before suit can be brought.

SEC. 65. No person who claims damages, arising from any cause, shall commence a suit therefor against the corporation until he files a claim for the same with the clerk of the corporation, and sixty days elapse thereafter, to enable the corporation to take such steps as it may deem proper to settle or adjust the claim; but this provision shall not apply to an application for an injunction, or other proceeding to which it may be necessary for such applicant to resort in case of urgent necessity. [66 v. 247, § 575.]

SEC. 66. Proceedings with respect to improvements shall be liberally construed by the councils and courts, to secure a

speedy completion of the work, at reasonable cost, and the speedy collection of the assessment after the time has elapsed for its payment, and merely formal objections shall be disregarded; but the proceedings shall be strictly construed in favor of the owner of the property assessed or injured, as to the limitations on assessment of private property, and compensation for damages sustained. Construction of provisions

SUBDIVISION III. SIDEWALKS AND WATER-COURSES.

SEC. 67. The council shall provide, by ordinance, for the construction and repair of all necessary sidewalks within the limits of the corporation. [66 v. 249, § 591.] Provision for sidewalks.

SEC. 68. When the council, board of improvements, or board of public works, as the case may be, declares, by resolution, that certain specified sidewalks shall be constructed or repaired, the mayor, or board of public works, where there is such board, upon being advised thereof, shall cause a notice to be served upon the owner, or agent of the owner of the property bounding or abutting on such sidewalks, of the passage of such resolution; and if it appear in the return made by the mayor, board of public works, or otherwise, that such person cannot be found, notice thereof shall be given by publication in some newspaper of general circulation in such city, for four consecutive weeks. [73 v. 10, § 592.] Notice to be served on owners of abutting property.

SEC. 69. If such sidewalks are not constructed within sixty days, or repaired within fifteen days from the service of the notice, or completion of the publication, the council, or board, may have the same done at the expense of the owner; and such expense shall constitute a lien upon the property bounding or abutting thereon, and shall be collected in the same manner, and with the like penalty and interest, after demand and non-payment, as in other cases of improvement. [73 v. 10, § 592.] On failure of owner to repair, same may be done at his expense.

SEC. 70. The council, or trustees, of a municipal corporation, through or into which any turnpike or plank-road passes or enters, may, with the consent of the authority having control or direction thereof, cause to be constructed on the sides of such road, sidewalks, not exceeding twelve feet in width, and gutters for the passage of water; and may also cause the same, when constructed, to be kept in proper order and repair; and the council, or trustees, shall have power, for the purpose of the construction or repair of such sidewalks or gutters, to assess and collect the charges and expenses thereof on the owners of lots and lands abutting on such road, and to supervise and control such sidewalks and gutters, in all respects as if the road were a street of the corporation. [66 v. 250, § 593.[Construction of sidewalks to turnpikes, etc.

SEC. 71. If the board of public works, board of improvements, council, or trustees of any municipal corporation, deem it necessary to construct a sidewalk on one side only

Construction of sidewalks on one side only.

of any street, alley, turnpike, or plank-road, with proper crossings from one side to the other, it shall be lawful to assess and collect the charge for constructing or repairing such sidewalk and crossings on the owners of the lots or lands abutting on both sides of such street, alley, or road, in like manner as if such sidewalk had been constructed on both sides; but after a sidewalk is so constructed, and the charge therefor so assessed, if it is deemed necessary to construct a sidewalk on the other or corresponding side of such street, alley, or road, the charge therefor shall also be assessed on the owners of the lots and lands on both sides. [66 v. 250, § 594]

Exemption from taxation where sidewalk already constructed.

SEC. 72. Nothing in this chapter shall be so construed as to tax property for the purpose of constructing any sidewalk, the owners of which have already constructed and maintained a sufficient sidewalk in front of such property. [66 v. 250, § 595.]

Cost of sidewalks along property of the corporation.

SEC. 73. In all cases where it is deemed necessary by a municipal corporation to build or repair sidewalks along that portion of any street, alley, or public highway, which passes by or through any public wharves, market-spaces, parks, cemeteries, public grounds or buildings, the proper proportion of the estimated expense thereof shall be by the council of such corporation levied, certified, and collected in the manner provided in the preceding subdivisions of this chapter. [66 v. 250, § 596.]

As to watercourses.

SEC. 74. The expense of opening, constructing, enlarging, excavating, improving, widening, straightening, deepening, or extending any canal, ship-canal, or water-course, whether such water-course is navigable or otherwise, as authorized by division three, chapter three, of this title, and whether the same is done for the purpose of navigation or the prevention of overflow, or any other purpose, shall be assessed and collected in the manner pointed out in this chapter. [73 v. 167, § 601.]

SUBDIVISION IV. SPECIAL PROVISION AS TO ASSESSMENTS IN CITIES OF THE FIRST GRADE OF THE SECOND CLASS.

Election of board to superintend street improvement by abutting property owners in Columbus.

SEC. 75. In cities of the first grade of the second class, the owners of property abutting on a street or avenue are authorized to elect five citizens of the city, owners of property abutting as aforesaid, whose duty it shall be to control and superintend the grading, curbing, and paving of such street, and who shall serve without compensation. [72 v. 153, § 1.]

When election held; notice of.

SEC. 76. When the council directs the grading, paving, and curbing of any street or avenue, under the provisions of this subdivision, and authorizes the election of commissioners, the time and place of holding the election shall be fixed by three citizens, owners of property as aforesaid, appointed by the council, who shall act as officers at the election, and the election shall be held within thirty days after the offi-

cers are appointed; of which election they shall give public notice for three weeks by advertisement in at least two newspapers of the city, and by hand-bills posted in public and conspicuous places along the street or avenue to be improved; and if such officers neglect to give the notice required, the council may appoint other officers to hold the election as herein provided. [72 v. 153, § 2.]

How election held.

SEC. 77. The election shall be by ballot; each owner of property shall be entitled to one vote for every foot front of property on the street or avenue; and each owner of property may vote for not more than five persons, and the five persons having the highest number of votes cast, respectively, shall be declared elected; the officers conducting the election shall, before opening the polls, be sworn to faithfully perform their duties; they shall keep a list of persons voting; and, within ten days after the election, they shall return to the city clerk a list of the voters at the election, the ballots cast, the number of votes cast for each person voted for, copies of the advertisements, and the names and dates of the newspapers in which the same were published, all of which shall be certified to by the officers. [72 v. 153, § 3.]

Certificates of election to be issued, etc.

SEC. 78. If, upon such return, the election appears to have been regular, the clerk shall issue certificates of election to the persons who appear by the return to have been elected, unless notice is given to the city clerk, within ten days after the election, that the same was irregularly conducted, or that some of the persons elected were ineligible; which notice shall be in writing, signed by one or more persons interested in the improvement, and specifying the ground of the objection. [72 v. 153, § 3.]

When new election ordered.

SEC. 79. If such notice is given, it shall be the duty of the city clerk to report it to the council, which shall order an investigation of the objections, by a committee for that purpose; and if the committee finds that the objections are not well taken, the papers shall be returned by the committee to the city clerk, with a certificate of its action, whereupon he shall issue the certificate as aforesaid; but if the committee finds that the objections are well taken, it shall so report to the council, which shall order a new election of the entire board, or any one or more of the commissioners, as the case may be; and if no objection is made to the election, or if the committee of investigation reports in favor of its legality, it shall be regarded as legal and valid. [72 v. 153, § 3.

In case of tie vote.

SEC. 80. In case of a tie vote between any persons voted for as commissioners, the elective officers shall order a new election to supply the vacancy, to be held at such time and place as they may fix, not more than twenty days thereafter, of which they shall give notice in the manner hereinbefore directed, for two weeks. [72 v. 154, § 3.]

SEC. 81. The commissioners shall organize within ten days after notice of their election, which notice shall desig-

Organization of commissioners.

nate the time and place for the organization, and elect one of their number president, and a secretary, who may be one of their number or not, as the commissioners determine; and the secretary shall receive such compensation as the commissioners may determine. [72 v. 154, § 4.]

Non-attendance of commissioners at organization—action of council.

SEC. 82. If a majority of the commissioners fail to attend at the time and place designated for organization, the city clerk shall report the fact to the council, which may, if it sees proper, order a new election, or repeal the ordinance authorizing the improvement. [72 v. 154, § 4.]

Vacancies.

SEC. 83. If a commissioner removes from the city, or ceases to be a property owner, or neglects or refuses to attend in succession four regular meetings of the board, or meetings of which he shall have been duly notified, the commissioners may declare his position vacant; and if any vacancy occurs in the board by death, resignation, or otherwise, the remaining commissioners may fill the vacancy by the election of a suitable person, qualified as hereinbefore provided, and shall immediately thereafter notify the city clerk of such change. [72 v. 154, § 5.]

Quorum.

SEC. 84. A majority of the commissioners shall constitute a quorum for the transaction of business. [72 v. 154, § 5.]

Power of commissioners as to improvement.

SEC. 85. The commissioners are authorized to determine the kind and description of pavement to be used upon the street or avenue, and for such purpose shall make contracts for furnishing materials, grading, curbing, and paving the street or avenue, either for the entire work in one contract, or for parts thereof, in separate sections, as to them may seem best, and to superintend and control all work done in pursuance thereof, and to dispose of any surplus material obtained in the grading; provided, that the improvement shall be uniform throughout the length to be improved, and shall conform to the grade of the street or avenue as established, or as may be established by the council; and provided further, that no work shall be done under any contract until a certified copy thereof shall have been filed in the office of the city clerk. [72 v. 154, § 6.]

Contracts, how awarded.

SEC. 86. All contracts shall be made by the commissioners in the name of the city, and shall be made with the lowest bidder, upon sealed proposals, after public notice for not less than three weeks, in three newspapers of the city, and in such other papers as the commissioners may select, which notice shall contain a description of the kind and amount of work to be done and materials to be furnished, as nearly accurate as practicable, and the terms of payment, which may be fixed by the commissioners. [72 v. 155, § 7.]

Contractor to give bond.

SEC. 87. Each contractor shall be required to give bond to the city, with sureties to be approved by the commissioners, who shall have power to institute suit in the name of the city to enforce all contracts made by them. [72 v. 155, § 8.]

SEC. 88. All contracts made by the commissioners for the

payment of money, shall provide for its payment out of the funds hereinafter provided for the improvement. [72 v. 155, § 9.]

Contract to provide for payment of money out of certain fund.

SEC. 89. It shall be the duty of the city engineer to furnish to the commissioners the proper grades and lines, and see that the work is done in accordance with the ordinance and regulations of the city as to grades and lines. [72 v. 155, § 10]

City engineer to furnish grades.

SEC. 90. As soon as the grading and paving of the street or avenue, or any section thereof, shall have been completed to the satisfaction of the commissioners, they shall notify the city engineer of the fact, and the street or avenue, or part thereof, shall thereafter be under the control of the proper officers of the city. [72 v. 155, § 11.]

City to take control of street at completion.

SEC. 91. For the purpose of providing for the payment of the cost and expense of the improvement, the commissioners may, from time to time, as the work progresses, make requisition upon the mayor for the issue of bonds of the city, in such sums as they deem best, and it shall be the duty of the mayor to execute bonds in the name of the city, to an amount not exceeding the contracted price for the work, and the incidental expenses attending the same, which bonds shall bear the name of the street or avenue improved; they shall be signed by the mayor and countersigned by the city clerk, and sealed with the corporate seal of the city; they shall all bear the same date, and be payable seven years after date, and redeemable at any time at the option of such city; they shall bear interest at the [rate] of seven per centum per annum, payable semi-annually from date; and the principal and interest shall be payable at the office of the treasurer of the city. [73 v. 186, § 12.]

When payment to be made—how bonds issued.

SEC. 92. When the bonds are issued by the mayor and sealed with the corporate seal, they shall be delivered to the city clerk, who shall register them in a book to be kept for that purpose; and he shall countersign them and deliver them to the commissioners, and take their receipt therefor. [72 v. 156, § 13.]

Bonds to be registered.

SEC. 93. The commissioners may negotiate the bonds in such manner as they may think best, and for such prices as may be obtained for the same, but not less than par; and they shall pay all moneys received therefor to the treasurer of the city, report to the city clerk the number of bonds sold, and the amount received therefor, and before delivering the same to the purchaser, the bonds shall be countersigned by the commissioners. [72 v. 156, § 14.]

Negotiation of bonds and disposition of proceeds of sale.

SEC. 94. All moneys received by the city treasurer from the sale of such bonds shall be kept by him in a separate fund and paid on requisition of the commissioners, accompanied with an affidavit of the secretary of the board of commissioners that work has been done or materials furnished to the amount of the requisition, and that the money is required for the payment of the same; and all moneys received

Money from sale of bonds to be kept separate.

by the city treasurer, under this subdivision, shall be kept in the same manner, and subject to all the regulations regarding other money of the city, except that he shall keep a separate account of the same; and all interest received upon the same shall be credited to this fund. [72 v. 156, § 15.]

How cost of improvement ascertained and assessed.

SEC. 95. When the improvement is completed, it shall be the duty of the commissioners to ascertain the entire amount of the bonds sold by them, and the interest thereon, to the first day of October preceding, which shall be taken to be the cost of the improvement; and the cost shall then be assessed equally by the feet front upon the property fronting or abutting upon the improvement. [72 v. 156, § 16.]

Plat showing amount assessed against each lot to be prepared.

SEC. 96. The commissioners shall cause a plat of the avenue or street to be prepared, showing the separate lots of ground and the names of the several owners, and shall make, or cause to be made, a list or schedule of the names of all owners, and the amount assessed against each lot or piece of ground; they shall give two weeks' public notice, by advertisement in two newspapers in the city, and by hand-bills posted in conspicuous places on the line of the avenue or street, of a time and place where, for the period of twenty days thereafter, the same may be seen for the correction of errors; and after having corrected such errors as may be made known to them, they shall file the same in the office of the city clerk, and shall deliver a copy of the plat and schedule to the auditor of the county in which the city is situated. [72 v. 156, § 17.]

Assessments, how paid.

SEC. 97. The assessment shall be placed upon the tax list of the county, and shall be payable at the office of the county treasurer, in seven equal installments, with interest at seven per centum upon the unpaid portion thereof, the first of which, with interest on the whole amount at seven per centum, shall be payable at the first semi-annual payment of taxes next succeeding the time the assessment is placed on the tax list, and the other annually thereafter, with interest on the installments not due at the time, until all are paid; and the assessment shall be collected like other taxes; and for the services rendered under this section the auditor and treasurer of the county shall receive such compensation as may be allowed thereon by the city council. [72 v. 156, § 18.]

Assessment a lien.

SEC. 98. Such assessments, with the interest accruing thereon, shall be a lien on the property abutting upon the street or avenue from the commencement of the work, and shall remain a lien until fully paid, having precedence of all other liens, and shall not be divested by any judicial sale; provided, that the lien shall be limited to the lots bounding or abutting on the street or avenue, not exceeding in depth from the street or avenue one hundred and eighty-seven and one-half feet. [72 v. 157, § 19.]

Depth of lots to which lien limited.

SEC. 99. Any owner of property against which an assessment shall have been made for the cost of such improvement, shall have the right to pay the same in full, with interest

thereon at seven per centum from the time such assessment was made, or after having paid one or more of the seven installments and interest, he may, at any time, pay the balance of his assessment remaining unpaid, with the interest thereon, and such payment, in full, shall satisfy and discharge the lien upon the property; and any owner dividing his property so that the feet fronting the improvement are divided into separate lots or tracts, may discharge the lien in like manner upon any one or more of such lots, by payment of the amount unpaid thereon, calculated by the ratio of the feet front of such lot or lots to the feet front of his whole tract. [72 v. 157, § 20.]

Rights of property owners as to payment of assessment.

SEC. 100. All moneys received from assessments shall be appropriated, under direction of the finance committee of the council of such city, to the payment of the interest and the redemption of the bonds which may be issued for the improvement; and if any interest becomes due on the bonds where there is no fund from which to pay the same, the council of such city shall be authorized to make a temporary loan for the purpose of paying the same. [72 v. 157, § 21.]

Temporary loan to pay interest on bonds.

SEC. 101. The term owners in this subdivision shall be so construed as to include all corporations, public, private, and municipal. [72 v. 157, § 22.]

Who are owners.

SEC. 102. No mistakes in the description of the property, or in the name of the owner, shall vitiate the lien. [72 v. 157, § 23.]

Mistake in description not to vitiate lien.

SEC. 103. The council of any such city shall not have the right to authorize any improvement under this subdivision, unless two-thirds of the persons owning lands abutting upon any street or avenue to be improved in such city, petition the council for the privileges of this subdivision; provided, that no improvement shall be made under this subdivision unless the cost thereof exceed the sum of ten thousand dollars. [73 v. 32, § 24.]

Two-thirds of owners must petition before improvement ordered under this subdivision.

SEC. 104. A part or section of a street or avenue may be improved under this subdivision as well as an entire street or avenue. [72 v. 157, § 25.]

Part of street may be improved.

SUBDIVISION V. SEWERS AND ASSESSMENTS THEREFOR.

SEC. 105. When it becomes necessary, in the opinion of the council of a city or village, to provide a system of sewerage and drainage for such municipal corporation, or any part thereof, it shall be the duty of the board of improvements to devise and form, or cause to be devised and formed, a plan of sewerage and drainage for the whole city or village, or such part thereof as may be designated by the council; but in all cities the council may, by ordinance, declare that the construction, maintenance, and cleaning of the sewers shall be under the care of a board to be called the commissioners of sewers. [72 v. 168, § 602.]

Plans for sewerage and drainage.

SEC. 106. The commissioners of sewers shall have all the

Commissioners of sewers—their powers and duties.

powers, and perform all the duties required of the board of improvements, as provided in this chapter, or elsewhere in this title, in respect to sewers, drains, and ditches. [72 v. 168, § 602.]

Composition of the board of commissioners of sewers.

SEC. 107. The board of commissioners of sewers shall consist of five members, to be appointed by the mayor, subject to the confirmation of council, one of which shall be appointed for one year, one for two years, one for three years, one for four years, and one for five years, and thereafter one shall be appointed each year, to serve for a term of five years, and they shall serve without compensation; provided, that in a city of the second class or village, in which the council fail to establish, or in which it abolishes a board of improvements, the council of the city or village shall perform all the duties required of the board of improvements in this title. [72 v. 168, § 602.]

Board may appoint engineer, employés, etc.

SEC. 108. In cities having a board of commissioners of sewers, the board shall appoint an engineer, who shall be under the direction of the board, and perform all the duties provided for the city engineer, in this chapter or elsewhere in this title, with respect to sewers, drains, and ditches; the board may appoint such other employés as it may deem necessary; and the compensation of the engineer shall be fixed by the council. [72 v. 168, § 602.]

Sewer districts.

SEC. 109. The plan so devised shall, in the discretion of the council, be formed with the view of the division of the corporation into as many sewer districts as may be deemed necessary for securing efficient drainage and sewerage; each of the districts shall be designated by name and number, and consist of one or more main or principal sewers, with the necessary branches and connections, the main or principal sewers having their outlet in a river or other proper place; and the districts shall be so arranged as to be independent of each other so far as practicable. [66 v. 251, § 603.]

Main or trunk sewers.

SEC. 110. The council may, if in its opinion expedient, provide for the construction of main, or trunk sewers, without regard to districts. [66 v. 252, § 604.]

Assessments by districts.

SEC. 111. Where the corporation is divided into sewer districts, the assessments provided for in this subdivision shall be by districts. [66 v. 252, § 605.]

Discrimination as to improvements.

SEC. 112. After such plan has been prepared and adopted by the board of improvements, or board of commissioners of sewers, as the case may be, it shall be their duty to designate such portions of the work as may be required for immediate use; and where the corporation is divided into districts, the designation shall be by districts, and shall show what district, or part thereof, is to be improved. [66 v. 252, § 606.]

Plans and specifications to be prepared.

SEC. 113. Such boards shall have plans and specifications prepared for the construction of the proposed main sewers, showing the size, location, and inclination thereof, and the depth of the same below the surface. [66 v. 252, § 607.]

SEC. 114. When plans and specifications for the main

sewers have been prepared, the board of improvements, or the board of commissioners of sewers, shall give at least ten days' notice, in one or more newspapers of general circulation in the corporation, stating that such plans have been prepared, and are filed in the office of the board for examination and inspection by parties interested; by which notice the board shall designate the portions of the work proposed to be done, and where main sewer districts are provided for, the boundaries thereof. [66 v. 252, § 608.]

Notice of completion of plans, etc., to be advertised.

SEC. 115. At the time specified in the notice, or at an adjourned meeting, the board shall hear the parties interested, and may, if it sees proper, amend or correct the plans; and it shall thereupon file the plans, as amended, or, if no amendment be made, then the original plans, duly certified by it, in the office of the civil engineer of the corporation. [66 v. 252, § 609.]

Amendment of plans, etc.

SEC 116. After the plan of sewerage for the corporation, or any part thereof, has been approved by the board, and filed in the manner above provided, the council may direct the engineer of the corporation, or sewerage engineer, as the case may be, to make an estimate of the cost and expenses of constructing the work, according to such plan, and report to the council what portion of the same will be required for main sewerage, and what portion for local sewerage, for any lots and lands to which any portion of such main sewer may serve as local sewer. [66 v. 252, § 610.]

Engineer to estimate costs, etc.

SEC. 117. The council, on the recommendation of the board, shall cause such sewer, or sewers, specified in the plan, as may be designated by the board, to be constructed; and the ordinance shall specify the street, lane, alley, highway, market-space, public landings, or commons, or part or parts thereof, to be sewered and drained, in such manner that an examination or survey will show what lot or lots of land bound or abut on the same; and the council, upon the passage of such ordinance, shall cause a plat to be made, and filed in the office of the clerk of the corporation, showing the lots so bounding or abutting, and the number of the feet front of each lot. [66 v. 252, § 611]

Construction of sewers; ordinance, etc.

SEC. 118. The council shall provide for assessing the cost and expenses of constructing main sewers, upon the lots and lands bounding or abutting upon the streets, lanes, alleys, highways, market-spaces, public landings, and commons, in or along which the same shall pass, by the feet front, or according to the valuation of the same on the tax list, or according to benefits, as it shall determine. [66 v. 253, § 612.]

Assessment of cost of main sewers.

SEC. 119. The assessment shall not exceed the sum that would, in the opinion of the council, be required to construct an ordinary street sewer, or drain, of sufficient capacity to drain or sewer such lots or lands; nor shall any lots or lands be assessed that do not need local drainage, or which are then provided therewith; and the excess of the cost, over

Limit of such assessment.

the assessment herein authorized, shall be paid out of the sewer fund of the corporation. [66 v. 253, § 613.]

Assessment of cost of local sewerage.

SEC. 120. The council shall also provide for assessing the expenses of local sewerage, upon the feet front of lots and lands, by or through which any portion of the main sewer may pass, or according to the valuation of the same upon the tax list, or in proportion to benefits, as it may determine in each case. [66 v. 253, § 614.]

Rule of assessment, etc.

SEC. 121. If the assessment is upon the feet front, the basis shall be determined by taking the total cost of constructing the main and lateral sewers and drains, and the necessary appurtenances and inlets, and dividing the gross amount by the number of feet front subject to assessment, as herein provided for, on each side of the street, lane, alley, highway, common, market-place, or public landing, through or in which such sewers and drains may be laid, the quotient forming the amount to be assessed per foot front for each side of the street, lane, alley, highway, common, market-space, or public landing, as a charge for the cost and expenses of constructing the sewers and drains, and their necessary appurtenances. [66 v. 253, § 615.]

Discrimination in assessment in certain cases.

SEC. 122 The council may exempt from assessment, such portion of the frontage of any lot having a greater frontage than its average depth, and so much of any frontage of corner lots, as to it may seem equitable, and charge the deficiency caused by such exemption on the whole frontage taxed pro rata; but in so doing, it shall specially set forth, in the ordinance making such assessment, each lot so exempted; which ordinance, when passed, shall be binding upon the parties interested. [66 v. 253, § 616.]

Assessment not to exceed two dollars per foot front.

SEC. 123. In no case shall the assessment exceed the sum of two dollars per foot front on the property assessed; and when the amount of the quotient exceeds that sum, the excess shall be paid out of the sewer fund of the corporation. [66 v. 253, § 617.]

Assessment according to benefits.

SEC. 124. If the assessment be according to benefits, the council shall appoint three judicious freeholders of the corporation, or its vicinity, who shall assess the estimated expense of the main sewerage upon the lots or lands along which the same passes, in the manner above provided, in proportion to benefits; and the estimated expense of the local sewerage, where such local sewerage is provided for by this subdivision, shall be assessed on such lots and lands as will, in their opinion, be benefited thereby, whether fronting on the public ground in which the local sewer is to be constructed, or not, in proportion, as nearly as may be, to the benefits which may result to each lot or parcel of land. [66 v. 253, § 618.]

Report of assessments.

SEC. 125. The assessors shall make a report, in writing, specifying the amounts assessed by them upon each lot or parcel of land for main or local sewerage separately, and file

the same with the clerk of the corporation, within such time as the council may direct. [66 v. 254, § 619.]

Notice of assessment to be published.

SEC. 126. After the report is filed, the council shall cause not less than ten days' notice to be given, in some newspaper of general circulation in the corporation, setting forth the object of such assessment, and that the same will come before the council for confirmation at a time to be specified in the notice. [66 v. 254, § 620.]

Filing of objection to assessment.

SEC. 127. Objections to the assessment shall be in writing, and filed with [the] clerk within two weeks after the expiration of the notice; and persons objecting may be heard before the council at the time specified in the notice. [66 v. 254, § 621.]

Action of council thereon.

SEC. 128. The council may set aside the assessment on its own motion, or may, after hearing objections, confirm the same, or set it aside. [66 v. 254, § 622.]

New assessment provided for.

SEC. 129. If the council set aside the first or any other assessment, it may appoint other assessors, possessing the same qualifications as hereinbefore provided, and cause new assessments to be made; and the proceedings shall be the same as are provided for in the first assessment. [66 v. 254, § 623.]

Errors to be corrected.

SEC. 130. In confirming any assessment, the council may correct errors in description of any lots or lands made by the assessors. [66 v. 254, § 624.]

Order to county auditor to place assessment on duplicate.

SEC. 131. After making an assessment for main or local sewerage according to valuation, or according to feet front, or after the confirmation of any assessment for main or local sewerage according to benefits, the council may order such percentage of the assessment for main sewerage as may be necessary to pay the estimated cost of such portion of any main sewer, as provided for in this subdivision, which it may determine to construct, together with the total assessment for local sewerage for such portion of any main sewer, whether the assessment be by valuation, by benefits, or by the feet front to be certified to the auditor of the county in which the corporation is situated, to be placed on the tax list, and collected as other taxes. [66 v. 254, § 625.]

Assessment to be a lien on lands, etc.

SEC. 132. All assessments made under the provisions of this subdivision shall be liens on the lots or lands assessed; they shall be transferable, and may be collected against the owners personally, or by enforcement of the lien upon the property subject thereto; and proceedings for the recovery of the assessments, or the enforcement of the lien, shall be as directed in the preceding subdivisions of this chapter. [66 v. 254, §§ 626, 627.]

Assessments in new sewer districts.

SEC. 133. When a sewer district is set off, or established, the main sewer of which is a continuation of, or drain through or into the main sewer of any other district, the council, in providing for assessing the cost and expenses of the main sewer in such new sewer district, may provide for assessing upon the lots and lands therein such proportion as they shall

determine to be just, of the cost and expenses of constructing any unconstructed part of the main sewer in the district through which the new main sewer drains; which assessment, when the proportion thereof is determined, shall be made in the manner that other assessments are herein directed to be made. [66 v. 255, § 628.]

Subdivision of main sewer districts.

SEC. 134. The council shall have power to subdivide any main sewer district into sub-main sewer districts, or lateral or branch sewer districts, in the manner in which the establishment of main sewer districts is provided for; lay out and construct in such sub-main, or lateral or branch sewer districts, sub-main, lateral, or branch sewers having a common outlet into a main sewer; and assess and collect the cost of such construction upon the lots and lands in such sub-main, or lateral, or branch sewer district, in all respects, as directed in this subdivision for the assessment and collection of the cost of constructing main sewers. [66 v. 255, § 629.]

Assessments pro rata, etc.

SEC. 135. If the council determine to build only a portion of the sewer or sewers in such sub main, lateral, or branch sewer districts, it shall be lawful in such case to levy and assess the pro rata cost of constructing the whole of the sewer or sewers in such districts upon the lots or parcels of lands bounding or abutting upon the streets or public highways through or by which the portion of such sewer or sewers may be constructed; and the excess in the cost of the sewer or sewers so built, above the estimated pro rata cost for the who e district, shall be levied and assessed pro rata upon all the lots or parcels of land bounding or abutting upon the streets or public highways in such districts in which the sewer or sewers are not at that time completed. [66 v. 255, § 630.]

Construction of branch or local sewers.

SEC. 136. The council may provide for the construction of branch or local sewers within any street, or other public ground, within the corporation, wherein a main sewer is not established or built, which local sewers shall connect with a main sewer convenient thereto, as the council may direct; and if the corporation is laid off into districts, the connection shall be with a main sewer in the district wherein the local sewers are constructed; but no sewer shall be considered local, except such as are intended for and used exclusively for the drainage and accommodation of lots abutting thereon. [66 v. 255, § 631.]

Proceedings therefor.

SEC. 137. Proceedings for the establishment and construction of local sewers, as provided in the preceding section, and for the assessment and collection of the cost and expenses thereof shall be as directed in the previous sections of this subdivision regulating the establishment and construction of local sewers and connection with main sewers. [66 v. 255, § 632.]

SEC. 138. If any division or subdivision of lots or lands assessed for sewerage purposes occur after the first assessment has been made and confirmed, the council may require

the assessors hereinbefore mentioned, or such other assessors as it shall select, to apportion the original amount assessed upon the several parts of lots or lands so divided, whose report, when confirmed by the council, shall be conclusive upon all parties; and all assessments thereafter made upon such lots or lands shall be according to such division, and collected in the same manner as upon the original assessment. [66 v. 255, § 633.]

Division of lots after first assessment.

SEC. 139. The council, upon the recommendation of the board, may provide for the construction of proper house connections and branches leading into all main or branch sewers, and for the assessment of the cost and expense thereof upon the lots or parcels of land for the accommodation of which such connections and branches may be constructed; but in no case, except as a sanitary measure, shall the council require such house connections to be built further from the sewer, than to the inner line of the curbstone of the street or highway in which the same are constructed. [66 v. 256, § 634.]

House connections and branches.

SEC. 140. When an improvement provided for in the preceding section has been made, and the assessment therefor has not previously been ordered, the council shall pass an ordinance assessing the cost thereof upon the lots or parcels of ground for the accommodation of which such improvement was made; and by such ordinance it shall be declared within what time the assessment shall be paid into the treasury. [66 v. 256, § 635.]

Cost of branch sewers—how assessed.

SEC. 141. Parties owning property abutting upon a street or public highway, in or through which a public sewer or drain is constructed, shall have the privilege of tapping and using such sewer or drain for the purpose of draining their premises, under such rules and regulations as may be prescribed by the board; and the council may, by ordinance, require persons contracting to build such house connections to procure a license from the board, and may charge therefor such sum as may be deemed just. [66 v. 256, § 636.]

Tapping sewers for private use.

SEC. 142. The council of any city or village shall also have power to provide for the construction of ditches for necessary drainage within the corporation, under the restrictions and regulations, so far as applicable, contained in this subdivision. [66 v. 256, § 637.]

Ditches for drainage.

SEC. 143. The council may, whenever it is deemed necessary, provide for the repair or reconstruction of any sewer, ditch, or drain; and the proceedings for that purpose shall be the same, so far as applicable, as are herein required for the original construction thereof. [66 v. 256, § 638.]

Repairs of sewers, ditches, etc.

SEC. 144. In a city in which a system or plan of drainage has been adopted by competent municipal authority, and completed, any private owner or occupant of real estate contiguous to any part of such system or plan, who reasonably provides for carrying off all the surface or accumulated water upon such real estate into the completed system or plan,

Surface drainage; non-liability of land owners for damages in certain cases.

and maintains in proper order the means so provided, shall not be liable, while he keeps up and maintains such means of drainage, to an action by a neighboring owner or occupant of real estate, for water that may flow against, upon, or over his real estate, or injure the same, or the property thereon, after the same has been so discharged into such system or plan of drainage. [70 v. 292.]

Board of public works to have control of sewers, etc., in Cincinnati.

SEC. 145. In cities of the first grade of the first class, the powers and duties devolved upon the board of improvements or commissioners of sewers, in this chapter, shall be performed by the board of public works provided for in chapter two of this division, when not inconsistent with the provisions of that chapter; and in such city there shall be no board of improvements or board of commissioners of sewers. [73 v. 44, § 5.]

EIGHTH DIVISION: PROPERTY OF THE CORPORATION, DEDICATION, RIGHTS OF THE PUBLIC AND PROPERTY OWNERS, AND AGENCIES OF CONVENIENCE AND NECESSITY.

CHAPTER 1. WATER WORKS.
CHAPTER 2. FIRE DEPARTMENT.
CHAPTER 3. GAS COMPANIES.
CHAPTER 4. LIGHTING CORPORATION.
CHAPTER 5. RAILWAYS IN CORPORATE LIMITS.
CHAPTER 6. PARKS AND PUBLIC GROUNDS.
CHAPTER 7. CEMETERIES.
CHAPTER 8. PUBLIC HALLS, AND OTHER PLACES FOR PUBLIC ASSEMBLAGES.
CHAPTER 9. MARKETS.
CHAPTER 10. INSPECTORS.
CHAPTER 11. PLATS.
CHAPTER 12. PLATTING COMMISSION.
CHAPTER 13. STREETS.
CHAPTER 14. WHARVES AND DOCKS.
CHAPTER 15. LICENSES, AND HEREIN OF SHOWS, AUCTIONEERS, PAWNBROKERS, FERRIES, ETC.
CHAPTER 16. LEASE OR SALE OF CORPORATE PROPERTY.
CHAPTER 17. INJURIES RESULTING FROM EXCAVATIONS—DAMAGES.

CHAPTER 1.

WATER-WORKS.

SECTION
1. General powers of council as to land, etc., for water-works.
2. Trustees of water-works—board of public works.
3. Salary of trustees—duties of trustees or board.
4. By-laws, etc.
5. Water-rent for expenses of work.
6. Disposition of surplus.
7. Monthly reports and weekly deposits.
8. Money to be kept as a distinct fund.
9. Trustees or board may make contracts.
10. Annual investigation.
11. No charge for water to extinguish fires.
12. Protection of attachments.
13. Rules as to contracts.
14. Contractors must give bond.
15. Extension of aqueducts, etc., beyond corporation limits.
16. Construction and regulation thereof.
17. Water-works in contiguous cities or villages.
18. Construction and regulation thereof.
19. Authority to supply contiguous cities or villages with water.
20. Cost thereof, how raised.
21. Works to be joint property.
22. Termination of contract upon annexation.
23. Tax for payment of interest.
24. Tax for interest on loans.
25. Tax a lien on property.
26. Laying pipes in highways.
27. Criminal jurisdiction—territorial limits.
28. Contracts to supply corporation with water.
29. Limitation in creating debts in Cincinnati.

General power of council as to land, etc., for water-works.

SECTION 1. The council of a city or village shall have power to take possession of any land obtained for the construction or extension of water-works, reservoirs, or the laying down of pipe, and also any water rights or easements connected with the use of water; and any land, water right, or easement so taken possession of for water-works purposes shall not be used for any other purpose, except by authority of the trustees and consent of the council. [66 v. 205, § 334.]

Trustees of water-works.

SEC. 2. The council of any city or village in which water-works are situated, or in progress of construction, or when it orders water-works to be constructed, shall establish a board of three trustees, to be known as the trustees of the water-works, who shall be elected by the electors of the corporation, and hold their office for the term of three years, except that at the first election under this chapter, one shall be chosen for one year, one for two years, and one for three years; and thereafter one of the trustees shall be elected annually: provided, that in cities of the first grade of the first class there shall be no board of trustees of water-works, but the duties of such trustees are devolved on the board of public works mentioned in chapter two of the seventh division of this title, which board of public works shall have all the powers and perform all the duties required of the board of trustees in this chapter. [67 v. 76, § 335; 73 v. 43, §§ 5, 16.]

Salary of trustees—duties of trustees or board.

SEC. 3. The trustees shall receive a fixed salary, to be determined by the council, and the trustees or board shall manage, conduct, and control the works, furnish supplies of water, collect water-rents, and appoint all necessary officers and agents, and fix the term of office and the amount of the salary of each officer and agent so appointed. [66 v. 206, § 336.]

By-laws, etc.

SEC. 4. The trustees shall be authorized to make such by-laws and regulations as they may deem necessary for the safe, economical, and efficient management and protection of the water-works, and such by-laws and regulations shall have the same validity as ordinances, when not repugnant thereto, or to the constitution and laws of the state. [66 v. 206, § 337.]

Water rent for expense of water-works.

SEC. 5. For the purpose of paying the expenses or conducting and managing the water-works, the trustees or board shall have power to assess and collect, from time to time, a water rent of sufficient amount, in such manner as they may deem most equitable, upon all tenements and premises supplied with water, except that in cities of the first grade of the first class, the council shall, upon the recommendation of the board, provide for assessing the cost and expenses of laying or extending water mains upon the lots and lands bounding or abutting upon the streets, lanes, alleys, highways, market spaces, public landings, and commons in or along which such water mains are laid or extended, by the foot front, or according to the valuation of the same on the tax list, or according to benefits, as they shall determine. [71 v. 109, § 338.]

Assessment for expense in certain cities.

Disposition of surplus.

SEC. 6. If there is any surplus, after paying the expenses of conducting and managing the water-works, the same may be applied to the repair, enlargement, or extension of the works, or of the reservoirs, the payment of the interest of any loan made for their construction, or for the creation of a sinking fund for the liquidation of the debt; and the amount authorized to be levied and assessed for water-works purposes shall be applied by the council to the creation of a sinking fund for the payment of the indebtedness incurred for the construction and extension of water-works, and for no other purpose whatever. [66 v. 206, § 339.]

Monthly reports and weekly deposits.

SEC. 7. The trustees or board shall make monthly reports to the council of the receipts and disbursements of money belonging to the water-works, and an annual report of the condition of the same, which report the council may cause to be published in some newspaper of general circulation in the corporation; and all money collected for water-works purposes shall be deposited weekly, by the collectors thereof, with the treasurer of the corporation, and one of the receipts therefor shall be by such collectors deposited with the trustees, board, or authorized agent. [66 v. 206, § 340.]

SEC. 8. Money so deposited shall be kept as a separate and distinct fund, subject to the order of the trustees or board;

and all orders drawn by the trustees or board, on the treasurer of the corporation, shall be signed by one of the trustees or board, and countersigned by the clerk of the water-works, or of the board of public works. [66 v. 206, § 341.]

Money to be kept as a distinct fund.

SEC. 9. The trustees or board shall be authorized to make contracts for the building of machinery, water-works, buildings, reservoirs, and the enlargement and repair thereof, and the manufacture and laying down of pipe, and the furnishing and supplying with connections all necessary fire hydrants for fire department purposes, and keeping the same in repair, and for all other necessary purposes to the full and efficient management and construction of water-works. [70 v. 11, § 342.]

Trustees or board may make contracts, etc.

SEC. 10. The council of any corporation, in which water-works are situated, or in progress of construction, shall be authorized to appoint a committee for the investigation of all books and papers, together with all matters pertaining to the management of the water-works, at least once a year, and oftener, if necessary, by reason of any neglect of duty, or malfeasance on the part of any officer of the works; and any officer of the works, found by such committee so offending, shall be liable to removal from office by the council. [66 v. 206, § 343.]

Annual investigation.

SEC. 11. No charge shall be made by the trustees or board for supplying water for extinguishing fires or cleaning fire apparatus, or for furnishing and supplying connections and fire hydrants, and keeping the same in repair, for fire department purposes, or the cleaning of market houses, or for the use of any of the public buildings belonging to the corporation, or for any hospital, asylum, or other charitable institution devoted to the relief of the poor, the aged, infirm, or destitute persons, or orphan children. [70 v. 11, § 344.]

No charge for water to extinguish fires, etc.

SEC. 12. Attachments of whatever nature made to the water pipes, or other fixtures belonging to the water-works, and intended for public use, shall be subject to the same supervision, rules, and regulations, as are made for the protection of water-works against abuse, destruction, and inordinate or unnecessary use or waste of water, or the trustees may make general or special rules and regulations for such purpose. [66 v. 207, § 345.]

Protection of attachments, etc.

SEC. 13. The trustees or board, before entering into any contract for work to be done, the estimated cost of which exceeds five hundred dollars, shall cause at least two weeks' notice to be given, in one or more daily newspapers of general circulation in the corporation, that proposals will be received by the trustees, for the performing of the work specified in such notice; and the trustees shall contract with the lowest bidder, if in their opinion he can be depended on to do the work with ability, promptness, and fidelity; and if such be not the case, the trustees may award the contract to the next lowest bidder, or decline to contract, and advertise again. [66 v. 207, § 346.]

Rules as to contracts.

Contractors must give bond, etc.

SEC. 14. The trustees or board, shall require bond to be given, with good and sufficient securit , for the faithful performance of the work; but no member of the board of trustees, or public works, shall be such security; nor shall any trustee, or member of the board of public works, be a contractor, or in any wise, either directly or indirectly, interested in any such work to be contracted for: provided, that in case of emergency, council may, by a vote of two-thirds of all the members elected, authorize the trustees or board to enter into such contracts without advertising. [66 v. 207, § 347.]

Extension of aqueducts, etc., beyond corporation limits.

SEC. 15. The council of any corporation owning water-works, may, on the written request of any number of citizens living outside of the limits thereof, extend, construct, lay down, and maintain aqueducts, and water pipes to any distance outside of the corporation limits, not exceeding three miles; and for this purpose shall have the right to make use of such of the public streets, roads, alleys, and public grounds, as shall be necessary therefor. [66 v. 207, § 348.]

Construction and regulation thereof.

SEC. 16. Such aqueducts and pipes shall be so constructed and laid as not to interfere, unnecessarily, with the use of such streets, roads, alleys, and public grounds, as public highways, and public grounds; and the corporation so extending and establishing any part of its water works outside of its limits, shall have the same power and jurisdiction to prevent or punish any pollution of, or injury to the water so conveyed, or any injury to the works, or any portion thereof, as they may have within the limits of the corporation. [66 v. 208, § 349.]

Water-works in contiguous cities or villages.

SEC. 17. Any city or village owning water-works, whose territory is contiguous to that of another city or village may with the assent of such other city or village establish and maintain such portion of its water-works, as it deems advisable, within the limits of such other city or village, and shall have the right to make use of such of the public streets, alleys, and public grounds of such other city or village as shall be necessary, for the purpose of constructing, laying down, and maintaining all such aqueducts and water pipes as shall be required in connection with such water-works, for the conveyance of water along and across such streets, alleys, and public grounds. [66 v. 208, § 350.]

Construction and regulation thereof.

SEC. 18. Such aqueducts and pipes shall be so constructed and laid as not to interfere, unnecessarily, with the use of such streets, alleys, and public grounds, as public highways and public grounds; and the city or village so establishing any part of its water-works within the limits of such other city or village shall have jurisdiction to prevent or punish any pollution of, or injury to the water so conveyed, or of the stream or source from which the same is obtained, or any injury to any portion of the water-works so located

within the limits of such other city or village. [66 v. 203, § 351.]

Authority to supply contiguous cities or villages with water.

SEC. 19. Any city or village which has established, or hereafter establishes water-works, may enter into a contract with any contiguous city or village for the supply of the latter with water, upon such terms as shall be mutually agreed upon by the councils of the respective municipal corporations; and any city or village which has water-works, is hereby authorized and empowered to dispose of any surplus water, for manufacturing or other purposes, by lease or otherwise, upon such terms as may be agreed upon by the board of trustees of the water-works, or public works, and approved by the council of such city or village; and all moneys received for such surplus water, shall be applied to the payment of the principal and interest of the bonds issued for the construction of such water-works, or other expenses incident to the maintenance of the water-works; provided, that no lease shall be made for a longer term than twenty years. [69 v. 25, § 352.]

Cost thereof, how raised.

SEC. 20. The amount to be paid for such supply, shall be raised by such city or village in the manner provided for the payment of the expense of conducting and managing water-works constructed wholly by a city or village; and the amount so received by the city or village furnishing such supply, shall be applied to the payment of the interest on the sum borrowed for the construction of such water-works, or to defray the expense of their management, as the board of trustees for water-works, or board of public works, shall direct. [66 v. 208, § 353.]

Works to be joint property.

SEC. 21. Upon the annexation of one municipal corporation to another, the water-works theretofore constructed by either, shall thereby become the joint property of the united corporation, and shall thereafter be managed by the board of trustees of the corporation to which such annexation is made, or board of public works, as the case may be. [66 v. 208, § 354.]

Termination of contract upon annexation, etc.

SEC. 22. Any contract entered into by one municipal corporation for the supply of water to the other, as hereinbefore provided, shall be terminated by such annexation; and so much of the debt incurred by either, in the construction of water-works, as remains unpaid, shall thereafter be a charge upon the united corporation, to the same extent that the separate debt of either, incurred as aforesaid, was, before such union, a charge upon the corporation which constructed the same. [66 v. 209, § 355.]

Tax for payment of certain interest.

SEC. 23. For the purpose of paying the interest on the money borrowed for the erection and completion of water-works, during the erection and completion thereof, and before they shall have been put in operation, a tax of sufficient amount shall be assessed and collected, each and every year, in the usual manner of levying and collecting taxes in the

corporation upon all the taxable property thereof. [66 v. 209, § 356.]

Tax for payment of interest on loans.

SEC. 24. For the purpose of paying the interest on any loan which any city or village may have heretofore made, or may hereafter make, for the erection or extension of water-works, and after they shall have been put in operation, and for the building of machinery, a tax of sufficient amount may be assessed and collected by the council, in each year, in such manner as the council may deem most equitable and proper, as may be directed by ordinance, upon all the taxable property adjoining, abutting, or bounding upon any street, lane, [alley], public road, square, block, or premises, through which water pipe has been laid. [66 v. 209, § 357.]

Tax a lien upon property.

SEC. 25. The tax, when levied and assessed, shall be a lien upon the property upon which the same is levied, and a charge against the owners thereof, and shall be certified to the auditor of the county, and placed upon the tax list in a separate column thereof, and collected as other taxes; and the same shall be paid to, and be under the control of the trustees of the water-works, or board of public works, as the case may be. [66 v. 209, § 358.]

Laying pipes in highways.

SEC. 26. The council may prescribe, by ordinance, for the laying down of water pipes in all highways about to be paved, macadamized, or otherwise permanently improved, and for the assessment of the cost and expense thereof upon the lot or parcels of land adjoining or abutting upon the highways in which the same are laid; but in no case, except as a sanitary measure, shall the council require any house connections to be built further from the main pipe than the outer line of the curb stone. [66 v. 209, § 359.]

Criminal jurisdiction—territorial limits.

SEC. 27. The jurisdiction of any corporation owning water-works, to prevent or punish any pollution of the water, shall extend ten miles beyond the corporation limits. [66 v. 209, § 360.]

Contracts for supplying corporation with water.

SEC. 28. A municipal corporation in which any incorporated water company is properly organized under the laws of the state, shall have power to contract with such company for supplying with water the streets, squares, and other public places in the corporate limits. [71 v. 93, § 54.]

Limitation in creating debts.

SEC. 29. Except as otherwise provided in this title, the board of public works in cities of the first grade of the first class shall not hereafter be permitted to create any debt for the prosecution of work upon the water-works, beyond the yearly net income of the water-works, nor make any contract in any year that cannot be met and paid from the income of the water-works for the year; and all debts created in violation of these provisions shall be absolutely void; nor shall the council create any debt, or borrow any money for the use of the water-works, except as authorized in this title. [72 v. 87, § 3.]

CHAPTER 2.

FIRE DEPARTMENT.

SUBDIVISION I. *In cities of the first grade of the first class.*
SUBDIVISION II. *In cities of the second grade of the first class.*
SUBDIVISION III. *In villages and cities generally, and herein of further prvvisions relating to cities of the first and second grades of the first class.*

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SECTION
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2. Officers of board.
3. Record of proceedings.
4. Rules and regulations.
5. Appointment of fire marshal and other officers.
6. Powers of board
7. Members not to be interested in contracts, etc.
8. Board to advertise for proposals.
9. Necessary levy to be certified to auditor.
10. Disposition of interest on fund.
11. Limitation on power of board.
12. How payments made out of fund.
13. Fire alarm telegraph.
14. Fire marshal and assistants to act as fire wardens.
15. Duties of fire wardens.

SUBDIVISION II.

16. Board in Cleveland, how constituted.
17. Vacancy, how filled.
18. Officers of board.
19. Quorum.
20. Regular and special meetings.
21. Powers of board.
22. Members, etc , not to be interested in contracts, etc.
23. Necessary levy to be certified to auditor.
24. Appointment of executive officers by board.
25. To prescribe duties and fix salaries of officers, etc.; exclusion of politics.
26. Fire alarm telegraph.
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28. Special fire wardens.
29. Salaries, how fixed.
30. Provisions in subdivision one, made applicable to this.

SUBDIVISION III.

31. Powers of council as to fire department.
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34. To regulate the erection of structures, etc.
35. To invest fire engineer with powers, etc.
36. Engineer, etc., may make arrests, etc.
37 Compensation of such officer.
38. Application of this subdivision.

SUBDIVISION I. IN CITIES OF THE FIRST GRADE OF THE FIRST CLASS.

Board in Cincinnati, how constituted.

SECTION 1. In cities of the first grade of the first class, the management and control of the fire department shall be vested in a board of fire commissioners, to consist of five members, heretofore appointed by the police judge of said city, one of said members having been appointed for one

year, one for two years, one for three years, one for four years, and one for five years. Hereafter, at the expiration of any term, the mayor of said city, with consent of the common council thereof, shall appoint a member of the board for the term of five years, with the qualifications of an elector in such city, and vacancies shall be filled in the same manner for the unexpired term. The members of the board shall serve without compensation. [75 v. 5, § 1.]

Officers of board.

SEC. 2. The board shall annually elect one of its members as president, who shall preside at all meetings. Regular meetings shall be held at least twice each month, and oftener if deemed necessary by the president. Special meetings may be held on the call of three of the members, and notice shall be served upon the members of the board of all meetings, whether regular or special. [75 v. 6, §§ 2, 3.]

Record of proceedings.

SEC. 3. The board shall cause accurate record to be made of all their proceedings, which shall be received as evidence when certified by the secretary. A majority of the members shall be necessary to order the expenditure of money, or to make any contract, and the vote thereon shall be taken by the yeas and nays, and entered on the minutes. [75 v. 6, § 3.]

Rules and regulations.

SEC. 4. The board may make, from time to time, such rules and regulations for the government of the department as may be found necessary, which shall have the force and effect of ordinances when approved by the common council. [75 v. 7, § 3.]

Appointment of fire marshal and other officers.

SEC. 5. The board shall have power to appoint a fire marshal, who shall be the executive officer of the board, and have the active management of the fire department when in service, and such number of assistant fire marshals as may, in the judgment of the board, be required for an effective management of the department, whose terms of office shall be three years, and until their successors are elected and qualified. And the board shall appoint such other officers and employés as may be necessary for the efficient management of the department, who shall hold their positions until removed by death, resignation, or for incompetency, inefficiency, permanent disability, insubordination, or violation of a rule or regulation of the department. The board shall fix the salaries and prescribe the duties of the fire marshal, assistants, and of all officers and members of the department; and no member or officer shall be appointed or removed on account of his religious or political opinion, nor shall any officer or member participate in political conventions, or primary convocations of any political party whatever. [75 v. 6, § 2.]

Salaries.

Powers of board.

SEC. 6. The board may make all necessary repairs of houses, engines, or other apparatus belonging to the department, purchase necessary supplies, locate and build such fire cisterns and plugs as it may deem necessary for the better protection of the property of such city: provided, that for

all contracts exceeding one thousand dollars in amount, the approval of the common council shall first be obtained. [75 v. 7, §§ 4, 5.]

Members not to be interested in contracts, etc.

SEC. 7. No commissioner or other officer of the board shall be interested in the profits of any contract, and no officer or employé shall have power to incur any liability on account of the board, unless expressly authorized to do so at a meeting of the board. [75 v. 7. § 4.]

Board to advertise for proposals.

SEC. 8. At least ten days' notice shall be given in some newspaper of general circulation in the corporation, of the reception of proposals for the performance of any contract exceeding one thousand dollars in amount. Such contract shall be awarded to the lowest bidder, who shall furnish satisfactory security for the performance of the same. All contracts exceeding one thousand dollars in amount, shall be subject to the approval of the common council. [75 v. 7, § 4.]

Necessary levy to be certified to auditor.

SEC. 9. The board shall annually certify to the city auditor, at the time prescribed by law, the amount necessary to be levied on the tax list for the support of the department for the ensuing year, and so much thereof as may be allowed by the finance committee of the common council shall form a part of the levy, and be used exclusively for the use of the board of fire commissioners, and shall be certified to the treasurer of such city by the auditor thereof as the fire commission fund, and shall be held by such treasurer as other city funds, subject only to the order of the board, as herein provided. [75 v. 7, § 5.]

Disposition of interest on fund.

SEC. 10. Any interest received from the deposit of said fund shall be credited to the fund, and until such tax is collected, the salaries of officers and members, and other necessary expenses shall be paid out of the fund that otherwise would be used for fire department purposes: provided, that the levy as above authorized to be certified to the auditor by the board, shall in no case exceed the sum of two hundred and twenty-five thousand dollars in any year. [75 v. 7, § 5.]

Limitation on power of board.

SEC. 11. The board shall have no power to incur any liability on behalf of the city beyond the amount levied or appropriated to its order by the common council; and the purchase of any additional ground, building any new house or apparatus, or the establishment of a new company, shall be made by the common council only upon the recommendation of the board. [75 v. 7, § 5.]

How payments made out of fund.

SEC. 12. All payments from the fire department funds shall be ordered at a meeting of the board, and shall be made by the treasurer of the city upon the warrant of the city auditor, which shall be drawn in accordance with the order of the board, and certified to in such manner as it may prescribe. [75 v. 8, § 5.]

Fire alarm telegraph.

SEC. 13. The fire alarm telegraph shall be attached to the fire department, and under the control and subject to the regulations of the board of fire commissioners; and the fire

marshal, by virtue of his office, shall be superintendent thereof. The board may appoint such operators and employés as may be necessary for the management of such alarm telegraph. [75 v. 8, § 6.]

Fire marshal and assistants to act as fire wardens.

SEC. 14. The fire marshal and assistants shall act as fire wardens, under the direction of the board, and may enter and examine any building in which fire is used, and condemn the same, if it be considered dangerous to the public safety; and whenever complaint is made of the dangerous condition of any building or part thereof, they shall immediately examine the same and cause the proper measures to be taken to put it in a safe condition. They shall also examine into the condition of any building reported unsafe, or in process of erection in violation of law, and when they deem it necessary, notify the owner to rebuild the same, in default of which they may compel compliance upon the part of such owner by suit in any court of competent jurisdiction. [75 v. 8, § 7.]

Duties of fire wardens.

SEC. 15. The fire wardens shall make prompt examination into the cause of every fire occurring within the city limits, and for this purpose are hereby authorized to issue process for and compel the attendance of witnesses and the production of books and papers, administer oaths, and take testimony, the material points of which shall be carefully entered in a record to be kept for that purpose. [75 v. 8, § 7.]

SUBDIVISION II. IN CITIES OF THE SECOND GRADE OF THE FIRST CLASS.

Board in Cleveland—how constituted.

SEC. 16. In cities of the second grade of the first class, the management and control of the fire department shall be vested in five commissioners, heretofore elected in accordance with the act of March 27, 1876, 73 v. 76, and consisting of the chairman of the committee on fire and water of the city council, one commissioner elected by the electors of such city for one year, one for two years, one for three years, and one for four years; and at each annual municipal election hereafter, there shall be elected, for the term of four years, one commissioner, who shall be a resident freeholder of the corporation; and the board shall consist of the chairman of such committee for the time being, and the four commissioners so elected. [73 v. 76, § 1.]

Vacancy, how filled.

SEC. 17. When a vacancy occurs by death, resignation, or otherwise than by expiration of term of office, the council shall fill the vacancy. [73 v. 76, § 2.]

Officers of board.

SEC. 18. The board shall, annually, elect one of its number president; and it shall also, at the same time, elect some suitable person, not a member of the board, secretary, who shall serve for the period of four years, and until a successor is elected. [73 v. 76, § 3.]

Quorum.

SEC. 19. A majority of the members of the board shall constitute a quorum for the transaction of business; but no election of officers, or appointment of men shall be valid unless approved by a majority of all the members; and the vote as given shall be duly recorded by the secretary. [73 v. 76, §3.]

Regular and special meetings.

SEC. 20. The board shall hold regular meetings at least twice each month, and oftener if deemed necessary; and special meetings may be called by the president of the board, or any three members, notice of which special meetings shall be served upon the members in person, or by leaving written or printed notices of the same at their places of residence. [73 v. 77, § 4]

Powers of boards.

SEC. 21. The board may make all necessary repairs of houses, engines, or other apparatus belonging to the department, purchase all necessary supplies, locate and build such fire cisterns and plugs as it may deem necessary for the better protection of the property of such cities, and contract in the name of the city for new houses, cisterns, or apparatus: provided, that all contracts exceeding five hundred dollars in amount, shall require the approval of the council. [73 v. 77, §§ 5, 6]

Members, etc., not to be interested in contracts, etc.

SEC. 22. At least ten days' notice shall be given in some newspaper of general circulation in the city, of the reception of proposals for the performance of any contract exceeding five hundred dollars in amount; such contracts shall be awarded to the lowest and best bidder who furnishes satisfactory security for the performance of the same; and all contracts exceeding five hundred dollars shall be subject to the approval of council. [73 v. 77, § 5.]

Necessary levy to be certified to auditor.

SEC. 23. The board shall annually certify to the city auditor, at the time prescribed by law, the amount necessary to be levied on the tax list for the support of the department for the ensuing year, and shall have no power to incur any liability on behalf of such cities beyond the amount so levied or appropriated to their order by the council; and all claims on account of the fire department shall be approved by the board and certified to the city auditor, who shall place the same in the next ordinance for the payment of claims; and the same shall be paid by the city treasurer on the order of the city auditor in the manner provided for the payment of other claims. [73 v. 77, § 6.]

Appointment of executive officers by board.

SEC. 24. The board may appoint an executive officer who shall be known as the chief of fire department, who shall have the active management of the department in service, and such number of assistants as may be deemed necessary, who shall serve during good behavior, and not be removed except for the causes hereinafter mentioned for the removal of other officers, and after hearing and trial before the board; and they shall also appoint such other officers and employés as may be necessary for the efficient management of the department, who shall hold their positions until removed by

death, resignation, or for incompetency, inefficiency, permanent disability, insubordination, or violation of any of the rules or regulations of the department, but no member shall be appointed or removed on account of his religious or political opinion. [73 v. 78, § 7.]

To prescribe duties and fix salaries of officers, etc.

SEC. 25. The board shall prescribe the duties of all officers and members of the department; and no officer or member shall actively participate in the political campaign or conventions of any political parties whatever, but the right of each officer and member to vote at any election as he may for himself determine, shall remain inviolate. [73 v. 78, § 7.]

Officers, etc., not to participate in political campaigns.

Fire alarm telegraph.

SEC. 26. The fire alarm telegraph attached to the fire department, shall be under the control and subject to the regulations of the board, and the chief of the fire department shall, by virtue of his office, have a general control of the same, the board having power to appoint a superintendent thereof; and the board may appoint such number of operators and other employés as may be necessary for the management of such telegraph. [73 v. 78, § 8.]

Chief and assistants to act as fire wardens.

SEC. 27. The chief and assistants shall act as fire wardens, under the direction of the board, and shall have power to enter and examine any building in which fire is used, and may condemn the same if it be considered dangerous to the public safety; and whenever complaint is made of the dangerous condition of any building or part thereof, it shall be their duty to immediately examine into the same, and cause the proper measures to be taken to put it in a safe condition; and they shall also examine into the condition of any building reported unsafe, or being erected in violation of law, and shall notify the owners thereof, if found unsafe, to rebuild the same, in default of which they may bring suit against the owners in any court having competent jurisdiction. [70 v. 190, § 7.]

Unsafe buildings.

Special fire wardens.

SEC. 28. The board may appoint one or more special fire wardens, to be under the control, and subject to the rules and regulations of the department. [73 v. 78, § 10.]

Salaries, how fixed.

SEC. 29. The board shall annually recommend to the city council salaries to be paid to the officers and members of the department, and the council shall thereupon fix such salaries, but at no greater rate than that recommended by the board; and when a reduction is made from the salaries as recommended, the rate of per cent. of reduction shall be uniform among all the officers and members of the department. [73 v. 79, § 11.]

Provisions in subdivision one, made applicable to this.

SEC. 30. Sections three, four, seven, and fifteen, as they are contained in the first subdivision of this chapter, relating to cities of the first grade of the first class, are hereby made applicable to cities of the second grade of the first class, as though said sections were in this subdivision repeated.

SUBDIVISION III. IN VILLAGES AND CITIES GENERALLY, AND HEREIN OF FURTHER PROVISIONS RELATING TO CITIES OF THE FIRST AND SECOND GRADES OF THE FIRST CLASS.

Powers of council as to fire department.

SEC. 31. The council of any city or village shall have power to establish all necessary regulations to guard against the occurrence of fires, and protect the property and lives of the citizens against damage and accidents resulting therefrom; and for this purpose, to establish and maintain a fire department, and provide for the establishment and organization of fire engine and hose companies, and provide such by-laws and regulations for the government of such companies as may be deemed necessary and proper: provided, that no active volunteer fireman, or one who has served five years consecutively as a volunteer fireman, shall be required to serve on j ries, or perform military duty in time of peace. [67 v. 76, § 326]

To purchase fire engines, etc.

SEC. 32. The council may also purchase, for its own use, or for the use of such companies, all necessary fire engines, either steam or hand, hose carriages and hose, and all such other apparatus and instruments as shall be deemed necessary to the extinguishment of fires, and establish lines of fire alarm telegraph within the limits of the corporation. [66 v. 204, § 327]

To erect necessary buildings, etc.

SEC. 33. The council may also provide or erect all necessary and suitable buildings, containing rooms for fire engines, hose carriages, fire apparatus, and instruments, and for the meetings of the fire and hose companies. [66 v. 204, § 328.]

To regulate the erection of structures, etc.

SEC. 34. The council shall have power to regulate the erection of houses and business structures, and, on the petition of the owners of not less than two-thirds of the ground included in any square, prohibit the erection on any such square of any building, or addition to any building, more than ten feet high, unless the outer walls be made of iron, stone, brick, and mortar, or of some of them, and to provide for the removal of any buildings or additions erected contrary to such prohibition; and in cities of the first class the council may prohibit, within such limits as it may deem proper, the erection of buildings unless the outer walls be constructed of iron, brick, and mortar, or stone, brick, and mortar. [66 v. 204, §§ 329, 333]

To invest fire engineer with power, etc.

SEC. 35. The council may invest the fire engineer, or any other officer of the fire or police department, with the power, and impose on him the duty, to be present at all fires, investigat the cause thereof, examine witnesses, and compel their attendance and production of books and papers, and to do and perform all such other acts as may be necessary to the effective discharg of such duties. [66 v. 205, § 330]

Engineer, etc., may make arrests, etc.

SEC. 36. Such officer shall have power to administer oaths, make arrests, and enter, for the purpose of examination, any building which, in his opinion, is in danger from fire; and

he shall report his proceedings to the council at such times as may be required. [66 v. 205, § 331.]

Compensation of such officer.

SEC. 37. For his services herein specified, such fire engineer or other officer shall receive such compensation as the council may prescribe. [66 v. 205, § 332.]

Application of this subdivision.

SEC. 38. The provisions of this subdivision shall not apply to cities of the first and second grades of the first class, except as to matters concerning which no provision is made in the first and second subdivisions of this chapter.

CHAPTER 3.

GAS COMPANIES.

SECTION
1. Council may regulate price of gas, etc.
2. Minimum not to be reduced during term agreed upon.
3. When council may occupy streets for gas purposes, etc.
4. Gas companies may be permitted to occupy streets.
5. Forfeiture of charter for neglect to furnish gas, etc.
6. Temporary failure shall not work forfeiture.
7. Council may appoint gas inspector; his duties and compensation.
8. Exclusive monopoly shall not be allowed to gas companies.
9. Council may erect or purchase gas works.
10. Trustees of gas works.
11. To be elected at annual election.
12. Powers of board of trustees.
13. Laying of gas pipe, and expense thereof.
14. Contract to supply municipal corporation with gas.

Council may regulate price of gas, etc.

SECTION 1. The council of any city, or village, in which gas companies, or gas-light and coke companies, may be established, are hereby empowered to regulate, from time to time, the price which such gas or gas light and coke companies may charge for gas, furnished by such companies to the citizens, public grounds and buildings, streets, lanes, alleys, avenues, wharves, and landing places; and such gas-light or gas-light and coke companies shall in no event, charge more, for any gas furnished to such corporation or individuals, than the price specified by ordinance of such council; and such council shall also have power to regulate and fix the price which such companies may charge for the rent of their meters. [66 v. 218, § 415.]

Minimum not to be reduced during term agreed upon.

SEC. 2. In case the council fixes the minimum price at which it requires any company to furnish gas to the citizens, or public buildings, or for the purpose of lighting the streets, alleys, avenues, wharves, landing places, and public grounds, for a period not exceeding ten years, and the company assents thereto, by written acceptance, filed in the office of the clerk of the corporation, it shall not be lawful for the council to require such company to furnish gas at a less price during the period of time agreed on, not exceeding ten years, as aforesaid. [66 v. 218, § 416.]

When council may occupy streets for gas purposes, etc.

SEC. 3. If such companies are, at any time, required by the council to lay pipes, and light any street, alley, avenue, wharf, landing place, public ground or building, and refuse or neglect for six months after being notified, by authority of the council, to comply with such requirement, the council may lay pipes and erect gas works, for lighting such streets, alleys, or public grounds, and all other streets, alleys, and public grounds, not already lighted; and such gas companies or gas-light and coke companies, shall thereafter be precluded from using or occupying any of the streets, alleys, public grounds or buildings, not already furnished with gas pipes of such companies; and the council may open any street for the purpose of conveying gas as aforesaid. [66 v. 218 § 417.]

Gas companies may be permitted to occupy streets.

SEC. 4. The council may, at any time after the default mentioned in the preceding section, permit such gas companies to use and occupy the streets, alleys, and public grounds of such corporation, for the purpose of lighting the same, and furnishing gas to the citizens and public buildings. [66 v. 218, § 418.]

Forfeiture of charter for neglect to furnish gas, etc.

SEC. 5. A neglect to furnish gas to the citizens, and other consumers of gas, or to the corporation, by any company, in accordance with the prices fixed and established by the council, from time to time, shall forfeit all rights of such company under the charter by which it has been established; and the council may proceed to erect, or, by ordinance, empower any person to erect gas-works, for the supply of gas to such corporation and its citizens: provided, that nothing in this section or in sections two and three, shall operate to impair or affect any contract heretofore made between any municipal corporation and any gas light and coke company. [66 v. 219, § 419.]

A temporary failure shall work no forfeiture.

SEC. 6. A temporary failure to furnish gas shall not operate as a forfeiture, unless such failure is through the neglect or misconduct of such gas-light, or gas-light and coke company. [66 v. 219, § 420.]

Council may appoint gas inspector; his duties and compensation.

SEC. 7. The council of any corporation, in which gas-works may be constructed, may provide, by ordinance, for the appointment of an officer, to be known as inspector of gas, whose duty it shall be to inspect all gas and gas meters, and certify the correctness of all bills against consumers of gas, make photometric tests, and perform such other duties as may be prescribed by ordinance; and the council shall fix his compensation. [66 v. 219, § 421; 73 v. 227, § 4.]

Exclusive monopoly shall not be allowed to gas companies.

SEC. 8. It shall not be lawful for any council to agree by ordinance, contract, or otherwise, with any person or persons, for the construction or extension of gas-works for manufacturing or supplying the corporation or its inhabitants with gas, which shall give or continue to any person or persons making such agreements with the council the exclusive privilege of using the streets, lanes, commons, or alleys, for

the purpose of conveying gas to the corporation, or the citizens thereof, or which shall deprive the council of the right to designate the kind of meter to be used for the correct measurement of the gas furnished under such agreement, and to provide for inspecting or regulating the same, or which shall not specify the exact quality of the gas to be furnished, and reserve to the council the right to enforce an exact compliance with such specification, under such rules as the council may prescribe; nor shall the council make any such agreement which shall not secure to the council the right to purchase such works, and all the appurtenances belonging thereto, at any time within the existence of such contract or agreement. [66 v. 219, § 422]

Council may erect or purchase gas works.

SEC. 9. The council of any city or village shall have power, whenever it may be deemed expedient and for the public good, to erect gas works at the expense of the corporation, or to purchase any gas works already erected therein. [66 v. 219, § 423.]

Trustees of gas works.

SEC. 10. When such purchase shall have been made, the council shall appoint a board of five trustees, which shall manage the gas works and supply the corporation and citizens thereof with gas; and the trustees shall serve until their successors are elected and qualified, as hereinafter provided. [66 v. 219, § 424]

To be elected at annual election.

SEC. 11. At the annual election occurring next after such purchase, the qualified voters of the corporation shall elect five trustees, to be known as the trustees of gas works, who shall hold their office for the term of five years, except that at the first election one trustee shall be chosen for one year, one for two years, one for three years, one for four years, and one for five years, and thereafter one trustee shall be elected annually; and the trustees shall not receive any compensation for their services. [66 v. 219, § 425.]

Powers of board of trustees.

SEC. 12. The board may construct gas works, extend gas pipes, manufacture and sell gas and coke, collect gas bills and other moneys due for gas, coke, or other material sold by it, and disburse the same; manage, conduct, and control the gas works; prescribe by by-laws the price of gas and coke, under such rules and regulations as, by ordinance, the council may prescribe, and the manner of using gas; and to carry into effect the provisions of this section, may also purchase material, employ laborers, appoint officers, purchase or lease the necessary real estate, and erect buildings thereon; and they shall be required to report to the council as often as the council may deem proper. [66 v. 220, § 426]

Laying of gas pipes and expense thereof.

SEC. 13. The council may prescribe, by ordinance, fo the laying down of gas pipes in all highways about to be paved, macadamized, or otherwise permanently improved, and for the assessment of the cost and expense thereof upon the lots or parcels of land adjoining or abutting upon the highways in which the same are laid; but in no case, ex-

cepting as a sanitary measure, shall the council require any house connections to be built further from the main pipe than the outer line of the curb stone. [66 v. 220, § 427]

Contract to supply municipal corporation with gas.

SEC. 14. A municipal corporation in which any incorporated gas company is properly organized under the laws of the state, shall have power to contract with such company for supplying with gas the streets, squares, and other public places in the corporate limits; but this section shall be subject to the proviso in the act of 1874, 71 v. 93.

CHAPTER 4.

LIGHTING CORPORATION.

SECTION
1. Provision for lighting streets, etc.
2. Board of improvement, etc., to have charge of, etc.
3. Council to pass ordinance to light bridge or railway.
4. Character of the ordinance.
5. Notice of requirement to be given.
6. Procedure on failure to light bridge, or railway.
7. Assessment for expense of such lighting, etc.
8. How lien to be enforced.

Provision for lighting streets, etc.

SECTION 1. The council of any city or village may provide for lighting the streets, alleys, public grounds and buildings, wharves, landing places, bridges, railways, and market spaces, within the corporation, including any portion of any turnpike or plank road therein, surrendered to or condemned by the corporation. [67 v. 47, § 428; 72 v. 107, § 199]

Board of improvements, etc., to have charge of, etc.

SEC. 2. In cities where there is a board of improvements or board of public works, such board shall supervise the lighting of the corporation, under the direction of the council. [67 v. 78, § 497]

Council to pass ordinance to light bridge or railway.

SEC. 3. When it is deemed necessary by the council of any city or village to have any bridge or railway, located in whole or in part in such corporation owned, possessed, or operated by any individual, company, association, or corporation, or any portion of the same, lighted, the council shall pass an ordinance for that purpose, requiring the individual, company, association, or corporation owning, possessing, or operating the same, to light such bridge or railway within a specified time. [67 v. 47, § 429]

Character of the ordinance.

SEC. 4. The ordinance shall specify the manner in which such bridge or railway shall be lighted, the number and style of lamp-posts, lights and fixtures, and the time such lights shall be kept burning in each twenty-four hours. [66 v. 220, § 430]

Notice of requirement to be given.

SEC. 5. Notice of such requirement to light any bridge or railway shall be given at least twenty days before any penalty or charge shall be imposed for default; and such notice may be given by delivering to any owner or part

owner, or any person having possession, charge or management of such bridge or railway, a written or printed copy of the ordinance. [66 v. 221, § 431.]

Procedure on failure to light bridge or railway.

SEC. 6. If the person, company, or corporation, owning, possessing, or operating such railway or bridge, neglect or fail to do such lighting in conformity with the provisions of the ordinance for twenty days after notice as aforesaid, the council may immediately proceed to cause the lighting to be done at the expense of such person or persons, company, or corporation. [67 v. 47, § 432.]

Assessment for expense of such lighting, etc.

SEC. 7. The council may direct the manner in which the expense of lighting such bridge or railway shall be assessed and collected, and when assessed, the amount shall be a debt due against and payable by such person, company, or corporation, and shall be a lien to be enforced as any other lien on such bridge and the land on which the same is built, or upon the real estate of the railway company or leasehold interest situate or being within the county wherein such city or village is located. [67 v. 47, § 433.]

How lien may be enforced.

SEC. 8. The charge may be collected or the lien enforced in the manner pointed out in the chapter providing for the assessment of damages and expenses for making public improvements. [66 v. 221, § 434.]

CHAPTER 5.

RAILWAYS IN CORPORATE LIMITS.

SUBDIVISION I. *Steam Cars.*

SUBDIVISION II. *Horse Cars.*

SUBDIVISION I.

SECTION
1. Occupation of streets, public grounds, etc.
2. When tracks to be used in common.
3. Regulation of rate of speed.

SUBDIVISION II.

SECTION
4. Street railroads authorized by ordinance.
5. Notice of application for ordinance to be published; consent of property owners.
6. Grade of streets where railroads are constructed.
7. Pavement of streets where railroads are constructed.
8. Extension of track.

SUBDIVISION I. STEAM CARS.

Occupation of streets, public grounds, etc.

SECTION 1. If it is necessary, in the location of any part of a railroad, to occupy a street, alley, or public ground in a city or village, the council of the municipal corporation and the railroad company may agree upon the manner, terms, and conditions upon which the same may be used or occu-

pied; and if the parties are unable to agree, and it is necessary, in the judgment of the directors of the railroad company, to use or occupy the street, alley, or other public ground, the company may appropriate so much of the same as may be necessary for the purpose of such road, in the same manner and upon the same terms as is provided for the appropriation of the property of individuals: provided, that every railroad company laying down such track upon a public street, alley, or other public ground, shall be liable to an action for any injury to private property abutting upon or near such public ground, occasioned by such location. [54 v. 133, § 12; S. & C 278.]

When tracks to be used in common.

SEC. 2. When two or more railroad companies have, in the same municipal corporation, two or more tracks of the same guage, the council may require them to use such tracks in common, and to pass their locomotives and cars over each of the tracks in one direction only. [54 v. 133, § 4; S. & C. 325.]

Regulation of rate of speed.

SEC. 3. When a railroad track is laid in a municipal corporation, the council may by ordinance regulate the speed of all locomotives and railroad cars within the corporate limits: provided, such ordinance shall not require a less rate of speed than four miles an hour, and in villages having a population of two thousand or less it shall not be fixed at a less rate than eight miles an hour; and the corporate authorities may by civil action, recover against any engineer, conductor, or company violating such ordinance a sum not less than five dollars nor more than fifty dollars for each offense. [74 v. 132.]

SUBDIVISION II. HORSE-CARS.

Street railroads authorized by ordinance.

SEC. 4. No corporation, individual, or individuals shall perform any work in the construction of a street railroad until application for leave is made to the council, in writing, and council, by ordinance, shall have granted permission, and prescribed the terms and conditions upon, and the manner in which the road shall be constructed and operated, and the streets and alleys which shall be used and occupied therefor. [66 v. 217, § 411]

Notice of application for ordinance to be published.

SEC. 5. No ordinance for such purpose shall be passed until public notice of the application therefor has been given by the clerk of the corporation, in one or more of the daily papers, if there be such, and if not, then in one or more of the weekly papers published in the corporation, for the period of at least three consecutive weeks; and no such grant shall be made except to the corporation, individual, or individuals that will agree to carry passengers upon such proposed railroad at the lowest rates of fare, and shall have previously obtained the written consent of a majority of the property-holders on the line of the proposed street railroad, represented by the feet front of lots abutting on the street

along which such road is proposed to be constructed: provided, that no grant, nor renewal of any grant for the construction or operation of any street railroad shall be valid for a greater period than twenty five years from the date of such grant or renewal. [67 v. 77, § 412]

Grade of streets where railroads are constructed.

SEC. 6. Before any street railroad shall be constructed on any street of less width than sixty seven feet, with a roadway of forty feet or under, the council shall provide that the crown of the street shall be made a nearly flat uniform curve, from curb to curb, without ditch gutters and in such manner as to give all wheeled vehicles the full use of the roadway up to the face of the curb, after the plan of the streets in the cities of Philadelphia and New York And on any street, whenever the tracks of two street railroads, or of a street railroad and a steam railroad, cross each other at a convenient grade, the crossings shall be made with crossing-frogs of the most approved pattern and materials, and kept up and in repair at the joint expense of the companies owning said tracks. [66 v. 217, § 413.]

Pavement of streets where railroads are constructed.

SEC. 7. The council may require any part or all of the track between the rails of any street railroad constructed within the corporate limits, to be paved with gravel, bowlders, or the Nicholson, or other wooden pavement, as may be deemed proper; but without the corporate limits, paving between the rails with bowlders or the Nicholson, or other wooden pavement shall not be required. [66 v. 217, § 414.]

Extension of track.

SEC. 8. The council of any city or village may grant permission, by ordinance, to any corporation, individual, or company owning, or having the right to construct, any street railroad, to extend their track, subject to the provisions of sections four and five of the act of March 27, 1866, entitled "an act supplementary to an act to provide for and regulate street railroad companies," on any street or streets where council may deem such extension beneficial to the public; and when any such extension is made, the charge for carrying passengers on any street railroad so extended, and its connections made with any other road or roads, by consolidation under existing laws, shall not be increased by reason of such extension or consolidation. [66 v. 140, § 1]

CHAPTER 6.

PARKS AND PUBLIC GROUNDS.

SUBDIVISION I. *In cities of the first grade of the first class.*

SUBDIVISION II. *In villages and cities other than cities of the first grade of the first class.*

SUBDIVISION I.

SECTION
1. Board of public works to have control of parks in Cincinnati.
2. Powers of board.
3. Liabilities in excess of funds forbidden.
4. Park fund.
5. Report of board.

SUBDIVISION II.

6. Appointment of park commissioners.
7. To serve without compensation.
8. Officers of public grounds and parks.
9. Police jurisdiction over parks.
10. Power of commissioners in Cleveland to lease, etc., contiguous territory.

SUBDIVISION I. IN CITIES OF THE FIRST GRADE OF THE FIRST CLASS.

Board of public works to have control of parks in Cincinnati.

SECTION 1. The improvement and control of all parks in cities of the first grade of the first class shall be vested in the board of public works, provided for in chapter two of the seventh division of this title. [68 v. 98, § 1; 73 v. 44, § 5.]

Powers of board.

SEC. 2. The board shall have power to make contracts for the improvement of the grounds, the erection of the necessary structures thereon, and to adopt rules for the care, protection, and government of the parks under its charge; and such rules, when approved by the common council, shall have the same effect and may be enforced by the same penalties as ordinances of the city. [68 v. 98, §§ 3, 4]

Liabilities in excess of funds forbidden.

SEC. 3. The board shall have no power in any way to incur any liability for park purposes beyond the amount of the funds which may have been levied therefor, or appropriated to their order by council for such purposes; and all purchases or leases of land for park purposes shall be made by the council only upon the recommendation of the board. [68 v. 99, § 8]

Park fund.

SEC. 4. All moneys derived from levies made for park purposes, and all moneys from the general fund appropriated by council for such purposes, shall be placed in a special fund called the park fund, and shall be disbursed by the treasurer of such city, upon a warrant by the auditor, which shall be drawn in accordance with the order of the board. [68 v. 99, § 9]

Report of board.

SEC. 5. The board shall annually make a full report to the council of their proceedings in respect to parks, with a

detailed account of the receipts and expenditures on such account, at such time as the council may direct; and they shall also make out and forward to the council, at any time that may be required, an estimate of the amount of money necessary to carry on the improvements of such parks for the next year, and forward the same to council for its information in making the annual levy. [68 v. 101, § 10.]

SUBDIVISION II. IN VILLAGES AND CITIES OTHER THAN CITIES OF THE FIRST GRADE OF THE FIRST CLASS.

Appointment of park commissioners.

SEC. 6. When the council of any city or village, other than the cities provided for in the first subdivision of this chapter determines by resolution, to lay out and improve any public grounds or park, it shall be the duty of the mayor to appoint, with the consent of the council, three resident freehold electors of the corporation as commissioners for that purpose, one of whom shall be appointed to serve for one year, one for two years, and one for three years, and thereafter one commissioner annually to serve for three years. [66 v. 215, § 397.]

To serve without compensation.

SEC. 7. Such commissioners shall constitute a board to be called the "park commissioners," and they shall serve without compensation; and in villages, whenever the council may deem expedient so to declare by resolution, one or more of the commissioners may be appointed from the members of the council. [66 v. 215, § 398.]

Officers of public grounds and parks.

SEC. 8. The commissioners may appoint a superintendent and all other necessary employés, and fix their compensation, such compensation to be subject to the approval of the council, and prescribe their duties, and, generally, they shall have the same powers and perform the same duties, with respect to improving, laying out, embellishing, and protecting public grounds and parks, so far as applicable, as are vested in and required to be performed by the trustees of cemeteries, as provided in chapter seven of this division. [67 v. 76, § 399.]

Police jurisdiction over parks, etc.

SEC. 9. When the park or public grounds are situated without the limits of the city or village, the council may by ordinance extend the police jurisdiction of the corporation owning such park or grounds, over the same, in the same manner and to the same extent as if situated within the limits of the corporation. [66 v. 215, § 400.]

Power of commissioners in Cleveland to lease, etc., contiguous territory.

SEC. 10. The council of cities of the second grade of the first class may lease, rent, or otherwise hold any lots or lands abutting upon, or contiguous or adjacent to any park or public grounds; and the park commissioners of such city shall have the same power and authority with respect to the lands so leased, rented, or held, as they may have over other parks or lands within their control. [74 v. 9.]

CHAPTER 7.

CEMETERIES.

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4. Their term of office.
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6. Duties of trustees.
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11. Charge for cemetery lots limited.
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17. Union of cities, etc, and townships for cemetery purposes.
18. Election of trustees in case of union.
19. How appropriation shall be made.
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24. Discrimination forbidden.
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29. Public burial ground, etc., may be appropriated.
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31. Rights and title inviolate.
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33. Powers of councils as to cemeteries.
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35. Burials may be prohibited within corporate limits.
36. Power limited as to villages.
37. Bond may be required of disbursing trustee.
38. Applicability to existing cemeteries.
39. Property in villages exempt from taxation.
40. Conveyance of lands abandoned for cemetery purposes.

Council to provide cemeteries.

SECTION 1. The council may provide places for the interment of the dead outside of the corporate limits, and the police powers of the corporation shall extend to those places. [66 v. 210, § 361.]

Title to be vested in corporation.

SEC. 2. The title to, and right of possession of all public graveyards and burial grounds, located within any city or village, which have been set apart and dedicated as public graveyards or burial grounds, and grounds which have been used as such by the public, but not dedicated, except such as may be owned or under the care of any religious or benevolent society, or any incorporated company or association, shall be and the same are hereby vested in the corporation where such public graveyard or burial ground is located. [66 v. 210, § 362.]

Board of trustees to be elected.

SEC. 3. The electors of a city or village, in which there are such grounds, or which may now or hereafter, by purchase or otherwise, own a public cemetery or burial ground, shall elect, at the annual election for corporation officers, a board of three trustees, each of whom shall be a freehold elector of the corporation, which board shall be known as the "trustees of cemeteries." [66 v. 210, § 363.]

Their term of office.

SEC. 4. The trustees shall serve without compensation, and hold their offices for three years, except that at the first election one of the trustees shall be elected for one year, one for two years, and one for three years, and thereafter one shall be elected annually, and a majority shall constitute a quorum: provided, that in cities and villages wherein there is such board, the members shall serve until the expiration of their terms, and one member shall be elected annually thereafter to serve for three years. [66 v. 210, § 361.]

Vacancies, how filled.

SEC. 5. All vacancies which may occur in the board shall be filled by appointment of the council, and the person so appointed shall hold his office until the next regular municipal election; and the council by a concurrent vote of two-thirds of all the members elected thereto, may remove any trustee for inattention to his duties, want of proper judgment, skill, or taste for the due discharge of the duties required of him, or for other good cause. [66 v. 210, § 365.]

Duties of trustees.

SEC. 6. The trustees shall take possession and charge, and have the entire management, control, and regulation of all public graveyards, burial grounds, and cemeteries located in or belonging to the corporation, subject to its ordinances, and they shall direct, whenever they may deem it necessary, the laying out of such grounds and cemeteries into lots, avenues, walks, and paths, or other subdivisions, which lots shall be numbered, the avenues named, and a plat thereof made so as to exhibit a fair and distinct outline of the grounds; and the same shall be kept in the office of the clerk of the corporation for the use of the public. [66 v. 211, § 366.]

Their power, etc.

SEC. 7. The trustees shall direct all the improvements and embellishments of the grounds and lots, protect and preserve the same, and appoint, subject to the approval of council, all necessary superintendents, employés, and agents, and determine their term of office and the amount of their compensation. [66 v. 211, § 367.]

May institute suits, etc.

SEC. 8. The trustees shall, when necessary, institute suits in the name of the corporation to recover the possession of such grounds, remove trespassers therefrom, and recover damages for injuries thereto, or to any tombstone or monument therein, and they shall see that all laws and ordinances passed for the protection of public burial grounds and cemeteries, and the burial of the dead, are enforced. [66 v. 211, § 368.]

To make by-laws, etc.

SEC. 9. The trustees shall make such by-laws and regulations, not inconsistent with the ordinances of the corporation and the constitution and laws of the state, as they deem useful and necessary for the management and protection of such burial grounds and cemeteries as may be under their control, and the burial of the dead therein, which by-laws and regulations shall have the same validity as the ordinances of the corporation; and they shall perform all such

other duties pertaining to their office as the council may, by ordinance, prescribe. [66 v. 211, § 369.]

Shall fix price of lots and term of payment.

SEC. 10. The trustees shall determine the size and price of lots, and terms of payment therefor, and shall give to each purchaser a receipt, showing the amount paid and a pertinent description of the lot or lots sold; and upon producing such receipt to the proper officer, the purchaser shall be entitled to a deed for the lot or lots described therein. [66 v. 211, § 370.]

Charge for cemetery lots limited.

SEC. 11. No more shall be charged for lots than shall be necessary to reimburse the corporation for the costs of lands purchased or appropriated for cemetery purposes, and to keep in order and embellish the grounds; and provision shall be made for the interment in such cemetery of all persons buried at the expense of the corporation. [68 v. 130, § 371.]

Sale of lots, etc.

SEC. 12. The trustees shall have the entire charge and control of the receipts arising from the sale of lots, and of the laying off and embellishing the grounds; and they may appoint one of their number to sell lots, receive payment therefor, direct the improvements, and make the expenditures, under such rules and orders as they shall prescribe; but notice of such appointment shall, upon being made, be communicated to council. [66 v. 211, § 372.]

Clerk, and quarterly report.

SEC. 13. The trustees shall appoint a clerk, and keep accurate minutes of all their proceedings, and report quarterly to the council all the moneys received and disbursed by them as such trustees. [66 v. 211, § 373.]

Annual report to council.

SEC. 14. The trustees shall, annually, on the first Monday of April, or as soon thereafter as may be practicable, report in writing to the council, the number of lots sold, to whom sold, and the amount received therefor, during the year preceding, and a detailed statement of the expenditures during the same period, showing the time and purpose of each payment, and to whom made. [66 v. 212, § 374.]

Statement as to funds, etc.

SEC. 15. Such report shall also contain a pertinent statement whether the funds, if any on hand, are invested, and the character of the securities therefor, and such other matters as the trustees may deem expedient or the council may require. [66 v. 212, § 375.]

Enlargement of grounds.

SEC 16. When, in their judgment, an enlargement of any burial or cemetery grounds has become necessary, or grounds for additional cemeteries should be provided, the trustees shall report the fact to the council, and recommend such action as they may deem most expedient. [66 v. 212, § 376.]

Union of cities, etc., and townships for cemetery purposes.

SEC. 17. It shall be lawful for the councils of two or more municipal corporations, or of such corporation or corporations and the trustees of any township or townships, when conveniently located for that purpose, to unite in the establishment and management of a cemetery, by the purchase o appropriation of land therefor, not exceeding in extent one hundred acres, to be paid for as hereinafter provided. [66 v. 212, § 377; 68 v. 73, § 1.]

Election of trustees in case of union.

SEC. 18. When two such bodies unite for cemetery purposes, as provided in the preceding section, the municipal corporation or township having the larger number of voters at the last preceding annual election for corporation or township officers, shall elect two trustees, and the other corporation or township shall elect one trustee, and thereafter each corporation or township shall be entitled to two trustees every alternative year; when three such bodies unite for such purposes, each of such corporations or townships shall be entitled to one trustee; and when four or more such bodies unite for such purposes, the three corporations or townships having the largest number of voters, respectively, shall each elect one trustee, and at the next annual election, the corporation or township having the largest number of voters at the last election shall not be entitled to a trustee, but the corporation or township standing fourth in the number of voters shall be entitled to a trustee, and so on in rotation, so that each corporation and township shall be without a trustee at regular intervals corresponding with the number of corporations that may be united under the provisions of this chapter. And all vacancies in said board shall be filled by the council of such corporation or corporations and the trustees of such township in joint session convened for that purpose. [68 v. 73, § 2.]

How appropriations shall be made.

SEC. 19. When an appropriation of land for such purpose becomes necessary, it shall be made by the municipal corporation, or if there be more than one such corporation, then by the one having the largest number of inhabitants at the last federal census, which corporation, in making the appropriation, shall act for itself and any other corporation or township uniting with it, and the proceedings therefor shall be the same as required in this title where the appropriation is to be made for the use of the corporation alone. [66 v. 212, § 378.]

Titles, how vested.

SEC. 20. The title to such cemetery grounds, whether by purchase or otherwise, shall vest in and be held by the corporation making the appropriation, in trust for the use of its inhabitants and the inhabitants of the other corporations or townships in common; and provision shall be made for the interment in such cemetery of all persons buried at the expense of the corporations or townships. [66 v. 212, § 379.]

Expenses, etc., to be pro rata.

SEC. 21. The expense of such purchase, or of the proceedings in case of appropriation, and the damages awarded, or both, shall be borne by the corporations and townships in proportion to the property of each on the duplicate for taxation, and the amount of bonds issued by each in any case, for such cemetery purposes, shall be in the same proportion, and the percentage of taxation for all such cemetery purposes shall be the same in the corporations and townships. [66 v. 212, § 380.]

SEC. 22. The cemetery so owned in common, shall be

under the control and management of the trustees, and their authority over the same and their duties in relation thereto, shall be the same as where the cemetery is the exclusive property of a single corporation. [66 v. 212 § 381]

Control and management.

SEC. 23. The council of any city or village owning a cemetery in common with any other city, village, or township as aforesaid, shall have full power and authority to pass and enforce all ordinances necessary to carry into effect the provisions herein contained, and such as may be deemed necessary for the preservation and regulation of such cemetery and the protection thereof, and for the punishment of any person violating the ordinances, rules, and regulations, relating to such cemetery; and the mayor and police officers of such corporation shall have full and complete jurisdiction and authority to enforce all such ordinances, rules, and regulations, as if such cemetery grounds were located within or owned exclusively by the corporation. [66 v. 212, § 382.]

Power to enforce ordinances, etc.

SEC. 24. No distinction or discrimination of any kind shall be made by the trustees of such cemetery owned in common, in favor of one corporation against another, or in favor of a corporation against a township, or in favor of a township against a corporation, but the affairs of the cemetery shall in all respects be managed as though the same were owned and governed in the interests of the corporation or township alone. [66 v. 213, § 383]

Discrimination forbidden.

SEC. 25. In case of a union for cemetery purposes between a municipal corporation and a township, the council of the corporation and the trustees of the township shall have a joint meeting at the council chamber of the corporation, on the day of the first regular meeting of the council in the month of May of each year, for the purpose of determining the rate [of tax] to be levied upon the taxable property of the corporation and the township for the purposes herein required; and upon the passage of a joint resolution by a majority of the members of the council and the trustees, fixing the rate of taxation, it shall be the duty of the clerk of the corporation to certify such rate to the auditor of the county for assessment and collection; and in case there is more than one municipal corporation or township united for such purposes, the councils and trustees of the townships shall become such joint body with the same powers as if there had been one such corporation and township, and the clerk of the corporation containing the greatest number of inhabitants shall certify to the auditor as above provided, the rate of taxation. [66 v. 213, § 384]

Joint meeting of council and trustees.

SEC. 26. The trustees of such township or townships, or the council or councils of such municipal corporation or corporations, may at any time call a joint meeting of the council or councils and the trustees of the township or townships, on a reasonable notice given by either, for the purpose of making joint rules and regulations for the government of such cemetery, or changing the same, and making such

Joint meetings to make rules, etc.

orders as may be found necessary for the application of moneys arising from the sale of lots, taxes, or otherwise. [66 v. 213, § 385.]

Vote and record thereof.

SEC. 27. In all joint meetings, each member of the councils and each of the trustees shall have one vote in determining all questions; and the proceedings of all joint meetings shall be recorded by the clerk of the corporation having the greatest number of inhabitants. [66 v. 213, § 386.]

Adjoining townships may be admitted to participation, etc.

SEC. 28. Any township adjoining one in which a cemetery is established by the union of any of the bodies as hereinbefore provided, may, by consent of the trustees of such township and of the council or councils of the corporation, be admitted to an equal participation with the inhabitants thereof in the rights and privileges in such cemetery, upon such terms as may be mutually agreed upon, but the title and control of the cemetery shall continue vested in the corporation, as above provided. [66 v. 214, § 390.]

Public burial ground, etc., may be appropriated.

SEC. 29. In the establishment of cemeteries as herein provided, any city or village and any township may make use of any public burial ground or cemetery ground which may be held by such city, village, or township, and may make use of any land which such city, village, or township may have acquired by dedication, gift, or devise for burial purposes. [66 v. 213, § 387.]

Purchase of lands, improvements, etc.

SEC. 30. The council of any city or village, and the trustees of any township, may purchase of any cemetery association incorporated under existing laws, the lands, lots, and improvements of such cemetery association remaining unsold, for cemetery purposes, and take a conveyance thereof; but the purchase money in such cases shall be applied to the payment of the legal debts of such association, and to the embellishment and preservation of the land purchased, and such other purposes as the trustees of the cemetery may direct. [66 v. 213, § 388.]

Rights and titles inviolate.

SEC. 31. The rights and titles of lot owners, purchased prior to such sale and conveyance, shall not be questioned; and such lot owners shall continue to hold and occupy their lots, under such rules and regulations as shall be adopted for the government and regulation of such cemetery by the authorities making such purchase. [66 v. 214, § 389.]

Clerk shall record plat of ground, etc.

SEC. 32. It shall be the duty of the clerk of the corporation to record, in a book to be provided for that purpose, a plat of all grounds for cemetery purposes laid out into avenues, walks, paths, and lots, and he shall execute to the purchasers of lots such conveyance as may be necessary to carry into effect the contracts of sale; and such conveyance shall, at the expense of the person receiving it, be recorded in a book to be kept for that purpose, by the clerk of the corporation. [66 v. 214, § 391.]

Powers of council as to cemeteries.

SEC. 33. The council of any city or village owning a public burial ground or cemetery, whether within or without the corporation, may pass and provide for the enforcement of ordinances necessary to carry into effect the provisions of this chapter, and regulate such public burial grounds and cemeteries, the improvement of the same, and the burial of the dead therein; define the tenure and conditions on which lots therein shall be held; and protect such burial grounds and cemeteries and all fixtures thereon. [70 v. 274, § 392.]

Power to sell portions of cemetery.

SEC. 34. The council may sell any portion of such cemetery grounds not already used for the burial of the dead, which are unsuitable for burial purposes, and purchase with the proceeds thereof other suitable lands lying contiguous thereto; but no such sale shall be made until the council shall have contracted for an equal or greater quantity of land suitable for burial purposes: provided, that the trustees of any cemetery, elected under this chapter, for the purpose of paying any indebtedness, arising out of the purchase or improvement of such cemetery, shall, with the consent of the council of the corporation, where there is no union with any other corporation or township, and where there is such union, with consent of the bodies acting jointly as provided in section twenty-six, have power to sell or mortgage such portion of the real estate, belonging to such cemetery, as has not been used for burial purposes, or as may not be, in the opinion of the trustees, needed for such purposes, and the money arising from such sale or mortgage, shall be applied by the trustees to the payment of such indebtedness, and to no other purpose, except upon such sale where there may be a surplus after the payment of such indebtedness, in which case such surplus money shall be used by the trustees in the improvement of such cemetery grounds, and for no other purpose. [70 v. 274, § 392: 64 v. 110; S. & S. 877.]

Burials may be prohibited within corporate limits.

SEC. 35. The council may prohibit the interment of the dead within the corporation limits, and, for the purpose of making such prohibition effective, may not only impose proper fines and penalties, but shall also have power to cause any body, interred contrary thereto, to be taken up and buried without the limits of the corporation. [66 v. 214, § 393.]

Power limited as to villages.

SEC. 36. Villages shall not have the power to prohibit the interment of the dead, in any cemetery in use at the time of the incorporation of such village, except in such portions thereof as may not now be used for such interment. [66 v. 214, § 394.]

Bond may be required of disbursing trustee.

SEC. 37. The council may require the trustee who may be authorized to receive and disburse the moneys arising from the sale of lots, or otherwise, to enter into a bond to the corporation, with sufficient sureties, conditioned for the faithful performance of his duty as such trustee, and to pay over all moneys by him received, which shall be filed in the office of the corporation clerk. [66 v. 214, § 395.]

Applicability to existing cemeteries.

SEC. 38. The provisions of this chapter relating to the establishment of cemeteries by municipal corporations and township trustees, shall govern cemeteries already so established, so far as the same may be applicable. [66 v. 214, § 396.]

Property in villages exempt from taxation.

SEC. 39. All property within any village, in which there is a cemetery established and maintained by such village, shall be exempt from taxes for the purchase or maintenance of cemeteries, under the superintendence of the township trustees. [68 v. 74.]

Conveyance of lands abandoned for cemetery purposes.

SEC. 40. When a city or village holds any land or lands within its limits which shall have been used as a cemetery or burial ground, and in which interments have been prohibited by such municipal corporations, and it shall have been decided to remove the bodies interred therein, it shall be lawful for the council to sell or otherwise dispose of any such land or lands to the purchaser of the same, provided that such sale or other transfer of such land shall not operate to give such purchaser possession of the same until the bodies therein interred shall have been removed from such cemetery, and all monuments and tombstones be removed and re-erected at the place of reinterment of the remains of each person, respectively. [68 v. 124.]

CHAPTER 8.

PUBLIC HALLS AND OTHER PLACES FOR PUBLIC ASSEMBLAGES.

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3. Superintendent, etc., for hall.
4. Hall under control of council.
5. Decision as to building hall, when by ballot.
6. Union of city, etc., and township to build hall.
7. Where hall erected; purchase of ground.
8. Leasing hall or part thereof.
9. Rule when occupied partly for purposes other than official.
10. Examination of public building as to safety in case of fire.
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13. Appeal of owner or person having control of.
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15. Duty of hotel keepers as to fire escapes.
16. Duty of mayor to require such escapes; penalty for failure to comply.
17. Mayor, etc., to examine hotels every six months.

Power to erect halls.

SECTION 1. The council of any city or village may erect, enlarge, improve, and complete any public hall which shall be used for the public offices of the corporation, and such public and other purposes as the council may authorize. [66 v. 215, § 401.]

Enlargement, etc., of public halls.

SEC. 2. All the power herein conferred on the council in relation to the erection, enlargement, improvement, and completion of any public hall, shall apply to and be conferred on council in the erection, enlarging, improving, and

completing any addition to any public hall now owned by the corporation, or which may be hereafter erected. [66 v. 215, § 402.]

Superintendent, etc., for hall.

SEC. 3. For the complete execution of the powers in this chapter granted, the council may appoint a superintendent or architect, or both, and such other persons as may be deemed necessary, and provide for the making of all necessary contracts, and prescribe rules and regulations for the government of all such employés. [66 v. 216, § 403.]

Council to have control of halls.

SEC. 4. Such hall, when completed, shall be under the control of the council, and the council shall have the same power in relation to the preservation and repair thereof as in its original construction or improvement. [66 v. 216, § 404.]

Decisions as to building hall, when by ballot.

SEC. 5. The electors of a village, or of a city of the third and fourth grades of the second class, may, at an annual municipal election, decide by ballot for or against levying a tax on all the property subject to taxation in such municipal corporation, for the purpose of erecting a public hall, or for the purpose of improving, enlarging, or making additions to a hall already erected, ten days' notice of such election being given by order of the mayor, at the request of ten freeholders of the corporation, by notice in a newspaper published in, or of general circulation in, such municipal corporation; but this section shall not be construed as a limitation on the powers conferred in the proceding sections of this chapter; and if a majority of the ballots cast at such election is in favor of erecting, improving, enlarging or adding to such hall, the provisions of the above sections three and four of this chapter shall thereupon be applicable to such hall. [63 v. 84, § 1; S. & S. 783.]

Union of municipal corporation and township to build hall.

SEC. 6. The electors of a village or of a city of the third and fourth grades of the second class, and the electors of the township in which the municipal corporation is situated holding separate elections, on such notice as is provided for in the preceding section, may, if both so determine by such vote, unite in the erection of such public hall, the notice of the election by the electors of the township to be given by the township clerk, on the order of the township trustees, on the application of ten freeholders of the township not residing in the municipal corporation. [64 v. 140, § 1; S. & S. 784.]

Where hall erected; purchase of ground.

SEC. 7. The hall shall be erected on a public square of the municipal corporation, or elsewhere, as the council and trustees may determine, and for this purpose they may purchase ground; and such purchase may be made and such hall erected, enlarged, improved, or repaired, and occupied, on such terms and conditions as the council and trustees may agree upon. [64 v. 140, § 1; S. & S. 783, 784.]

SEC. 8. When there is a public hall, erected by taxation, in any city of the second class or village, and the building or any part thereof may not be needed for public business

Leasing hall or part thereof.

the council shall lease the building or part thereof, as the case may be, for private offices, lectures, or like purposes, and for such length of time, and upon such terms as shall seem to it proper, and the money received for rents shall be forthwith paid into the treasury of the municipal corporation; and when a municipal corporation and a township have united in erecting such hall as aforesaid, they shall jointly have the same power to lease as above provided, and the amount received shall be divided equitably by the council and the township trustees, and the amount belonging to the municipal corporation shall be paid by the party receiving it, into the corporation treasury, and the amount belonging to the township shall be paid by such trustees into the township treasury. [70 v. 55, § 1.]

Collection of rent, when used for certain purposes.

SEC. 9. Whenever any such hall building, in whole or in part thereof, or any room or rooms, or parts of rooms therein shall be used or occupied by any city, village, or township officer, or by a justice of the peace, or by any mayor of the city or village, for the transaction of any other business than that required in the administration of public affairs, either by himself, or partner in business, it shall be the duty of the trustees of such township or council of such city or village, or of the council and trustees, acting together, as the case may be, to collect from such public officer or parties in business, such sum for rent as may be just and equitable. [70 v. 55, § 2.]

Examination of public hall, etc., as to safety in case of fire.

SEC. 10. On application of the owner or person having control of an opera house, hall, theatre, church, school-house, or other building except buildings where secret societies are held, used for public assemblages, in any municipal corporation, the mayor, civil engineer, and chief engineer of the fire department, or if such corporation has no such engineer, the mayor and two members of the council, shall carefully make a joint examination of such opera house, hall, theatre, church, school house or other building, to ascertain the means provided thereat and therein for the speedy and safe egress of the persons that may at any time be there assembled, and the means provided for extinguishing a fire at or in such place: provided, that when the assembly rooms of such church are situated upon the ground floor, with a sufficient number of low windows, in the opinion of the commission above provided for, to secure safe and easy means of escape in case of alarm, they shall grant the certificate mentioned in the next following section. [62 v. 139, § 3; S. & S. 636: 74 v. 61.]

Certificate in such case.

SEC. 11. If, upon such examination, it is found that such opera house, hall, theatre, church, school-house, or other building is abundantly provided with means for speedy and safe egress of the persons who may at any time be there assembled, and, if above the first floor, that it is provided therein with water or other equally efficient agency, and proper means to apply it, so that any fire which may occur at such place can be immediately extinguished, the mayor and

persons so acting with him, or a majority of the three, shall issue to such owner or person having control as aforesaid, a certificate of the fact, which shall continue in force one year, unless sooner revoked by council. [62 v. 139, § 3; S. & S. 636.]

Re-examination in case of change in building.

SEC. 12. If any change or alteration is made in such building, the owner or person having charge of it, shall notify the mayor of the fact, who shall cause to be made a re-examination in all respects like that provided for in the last section, and if upon such examination such owner, or person having control, is entitled to such certificate as is mentioned in the last section, it shall be issued to him, with like effect. [62 v. 139, § 3; S. & S. 636.]

Appeal of owner or person in control from refusal to issue certificate.

SEC. 13. If any owner or person having control of such place, as aforesaid, shall feel himself aggrieved by the refusal of such officers to issue any such certificate, he may appeal from the decision to the council, which shall appoint three disinterested persons to examine the premises, any two of whom may issue the certificate provided for in sections eleven and twelve of this chapter. [62 v. 139, § 3; S. & S. 636.]

Penalties against owner or person having control.

SEC. 14. Whoever, being the owner or having control as an officer, agent or otherwise, of any opera house, hall, theatre, church, school-house, or other place for the public assemblage of people, in a municipal corporation, permits it to be used when any door affording exit therefrom is locked or barred, or opens inwardly; when the place is not provided with ample means for the safe and speedy egress of the persons who may be so assembled; when, if it is on another than the first floor, sufficient water and proper means to apply it, or other efficient means, are not provided in such place to extinguish any fire which may occur thereat; or when the certificate provided for in the above section eleven or section twelve, as the case may be, has not been issued, or is not in full force, shall, for each day or night he permits such place to be so used or occupied, forfeit and pay any sum not more than one thousand dollars, nor less than fifty dollars, to be recovered, with costs, in a civil action, in the name and for the use of the municipal corporation; and it shall be the duty of the mayor, with the aid of the police, to see that the provisions of this section are strictly enforced. [62. v. 139, § 3; S. & S. 636.]

Duty of hotel keepers as to fire escapes.

SEC. 15. It shall be the duty of all the owners or keepers of inns or public houses where travellers or boarders are lodged, to provide suitable and efficient ladders or other safe fire escapes from the different upper stories of such inn or house, to be easily accessible to each lodger, in case of fire. [74 v. 176, § 1.]

Duty of mayor to require such escapes.

SEC. 16. It shall be the duty of the mayor of each city or village, to require the owner or keeper of any inn or public house, to provide, in not less than sixty days after such notice shall have been given, such ladders or fire escapes, and have the same properly placed, and convenient of access to such

Penalty for failure to comply.

lodgers; and if any owner or keeper of such inn or public house, neglect or refuse to comply with such requirements within the time specified, he shall forfeit not less than fifty nor more than three hundred dollars for each month he so fails to comply therewith, to be recovered in the name and for the use of such city or village, in a civil action. [74 v. 176, § 2.]

Mayor, etc., to examine hotels every six months.

SEC. 17. It shall be the duty of the mayor of such city or village, personally or by the marshal or other head of the police of such city or village, acting under his direction, to carefully examine such inns or public houses once in every six months, and report all violations of the foregoing provisions to the council of such city or village, when proceedings shall be commenced without unnecessary delay against the person so offending. [74 v. 176, § 3.]

CHAPTER 9.

MARKETS.

SECTION
1. Power to establish markets.
2. Power to regulate markets.
3. No charge to be made for occupancy of market spaces, etc.
4. Farmers, etc., not to be prohibited selling their productions
5. Superintendent of markets.
6. Market-masters.

Power to establish markets, etc.

SECTION 1. The council of any city or village may appropriate, enter upon, and hold real estate within the corporate limits for market spaces, erect market houses, establish and regulate markets and market places, for the sale of meats, fish, provisions, vegetables, and other articles necessary for the sustenance, convenience, and comfort of the inhabitants, prescribe the times for opening and closing the same, make provision for lighting, watching, and cleaning the same and detecting false weights and measures, and prescribe the kind and description of articles which may be sold therein, and the stands or places to be occupied by the venders. [66 v. 225, § 455.]

Power to regulate markets.

SEC. 2. The council may also prevent forestalling the markets, prohibit or regulate huckstering in the markets, and adopt such rules and regulations as are necessary to prevent fraud, and preserve order in the markets; and they may authorize the immediate seizure, arrest, and removal from any market, of any person violating its regulations, together with any article in his possession, and the immediate seizure and destruction of tainted or unsound meat or other provisions. [66 v. 226, § 456.]

No charge to be made for occupancy of market spaces, etc.

SEC. 3. No charge or assessment of any kind shall be levied upon any farmer or producer of vegetables or provisions bringing the same to market, for occupying a place, with or without horses and wagons used in bringing such

produce to the market, in any of the market spaces, or in the streets contiguous thereto, on market days and evenings previous thereto. [66 v. 226, § 457.]

Farmers, etc., not to be prohibited selling their productions.

SEC. 4. Nothing in this chapter contained shall be so construed as to authorize the council to pass an ordinance for the purpose of assessing or imposing any fine or punishment upon any farmer or producer for selling at any time, within the corporation, during market hours, any article of provision or vegetables grown or produced by him. [67 v. 77, § 458.]

Superintendent of markets.

SEC. 5. In cities of the first class except the first grade, the superintendent of markets shall be appointed by the mayor with assent of the council, which shall prescribe the duties and fix the compensation of such officer; and in cities of the second class the council shall have power to create, by ordinance, whenever deemed expedient, the office of superintendent of markets, provide for his election or appointment, prescribe his duties, and fix his compensation. [67 v. 88, § 60: 69 v. 64, § 61.]

Market-masters.

SEC. 6. The board of health provided for in division sixth of this title, may appoint such number of market masters as it may deem necessary, define their duties and fix their compensation. [71 v. 160, § 318.]

CHAPTER 10.

INSPECTORS.

SECTION
1. Licensing of gaugers, inspectors, etc.
2. Amount of license, how fixed.
3. License to be for one year; vacancy.
4. Extent of license.
5. Power, penalties, etc., of inspectors.
6. Inspectors may appoint deputies.
7. Oath, bond, etc., of inspectors.
8. Injury from neglect or incapacity.
9. Removal of inspector for cause.
10. Council to be governed by certain provisions.
11. Fees for inspectors.
12. Inspectors of cattle, etc.
13. Rules for inspection to be prescribed.
14. Compensation.
15. Inspectors for other purposes.

Licensing of gaugers, inspectors, etc.

SECTION 1. The council of any city may, whenever deemed necessary, appoint and license one of the resident freehold electors of the corporation, possessing the necessary qualifications, to act within and for the corporation, as gauger and inspector of domestic and foreign spirits, linseed oil, lard oil, and carbon or mineral oils; one inspector of flour, meal, bread, and biscuit; one inspector of beef, pork, lard, and butter; one inspector of pot and pearl ashes; and one inspector of fish, when exposed for sale in barrels or half barrels. [67 v. 77, § 459.]

SEC. 2. The amount of the license shall be fixed by ordi-

Amount of license, how fixed.

nance, and shall be limited as follows: to inspect beef, pork, butter, and lard, not less than fifty nor more than one hundred dollars; to inspect fish, not less than two hundred and fifty nor more than five hundred dollars; and to inspect foreign and domestic spirits, linseed oil, lard and carbon or mineral oils, not less than seventy-five nor more than one hundred dollars. [66 v. 226, § 460]

License to be for one year; vacancy.

SEC. 3. Upon the license fee, as required in the preceding section, being paid, the person named therein shall be authorized to act as such inspector for the period of one year from the date thereof; and in case of vacancy occurring by death or otherwise, during the term for which any inspector may have been licensed, the council may fill such vacancy by granting a license for such sum as may be deemed proper. [66 v. 227, § 461.]

Extent of license.

SEC. 4. The license may authorize the inspector or inspectors, or any one or more of them, to inspect any one or more of the articles named in section one. [66 v. 227, § 462.]

Powers, duties, etc., of inspectors.

SEC. 5. The inspectors shall, within and for the corporation, have the same powers, perform the same duties, be governed by the same rules, and liable to the same penalties as are prescribed with respect to other inspectors. [66 v. 227, § 463.]

Inspectors may appoint deputies.

SEC. 6. The inspectors shall have the power of appointing as many deputies to act under them as their respective duties in office may require, and for the conduct of the deputy, the principal shall be accountable and held liable. [66 v. 227, § 464.]

Oath, bonds, etc., of inspectors.

SEC. 7. Every person licensed as an inspector, shall, before entering upon the duties of his office, take an oath or affirmation, that he will faithfully and impartially execute the duties required of him by law; and shall enter into bond conditioned for the faithful performance of his duties as such officer, with sufficient security, to be approved by the council, as follows: for inspectors of beef, pork, butter, and lard, the bond shall be three thousand dollars; and for inspectors of fish, foreign and domestic spirits, linseed, lard, and carbon or mineral oils, one thousand dollars; and in other cases in such sum, not less than one thousand dollars, as council may prescribe; which bonds shall be filed in the office of the city clerk and made payable to the city treasurer, and shall be renewed, from year to year, as the council may require. [66 v. 227, §§ 465, 472.]

Injury from neglect, etc., action therefor.

SEC. 8. Any person injured by the misconduct, neglect or incapacity of any inspector, may, within one year after the cause of action shall have accrued, institute suit on such official bond, but the corporation shall not be liable for the costs of such suit; the bond shall continue in force until the full amount of the penalty has been recovered; and any party obtaining judgment shall have execution as in other cases. [66 v. 227, § 466.]

SEC. 9. The council may, on complaint and sufficient

cause shown, remove from office any inspector; but no inspector shall be removed unless upon the vote of two-thirds of all the members elected. [66 v. 227, § 467.]

Removal of inspector for cause.

SEC. 10. The council in the licensing of inspectors of carbon or mineral oils, and the inspectors of those oils, shall be governed by the provisions of the law with respect to other inspectors. [66 v. 227, § 468.]

Council to be governed by certain provisions.

SEC. 11. The inspectors shall be entitled to the following fees for their services, to be paid, on demand, by the party calling upon them, viz: for packing and inspecting every barrel of pork or beef, eighteen cents, and for every half barrel, thirteen cents; for every package or keg of butter or lard, ten cents; for packing and inspecting every barrel of fish, twenty cents, and for every half barrel fifteen cents; and for inspecting and gauging foreign and domestic spirits, linseed, lard, carbon, or mineral oils, where there are less than twenty packages, ten cents each, and more than twenty, five cents each. [66 v. 228, § 469.]

Fees for inspection.

SEC. 12. The council of any city or village, except as provided in division six, chapter one, of this title, whenever it may be deemed necessary, shall have the further power to appoint one inspector, and, if required, one or more assistant inspectors, of beef-cattle, sheep, hogs, poultry, game, milk, milk-cows, fresh meat, and fresh fish. [66 v. 228, § 470.]

Inspectors of cattle, etc.

SEC. 13. The council shall prescribe, by ordinance, the duties of such inspectors, define their powers and fix their term of office; and they are hereby authorized to prescribe penalties for the violation of ordinances passed in pursuance of this chapter, and determine the disposition of the articles named in section twelve, when, upon inspection, they, or either of them, are found to be foul, tainted, or otherwise unfit for food. [66 v. 228, § 471.]

Rules for inspectors to be prescribed.

SEC. 14. The inspectors mentioned in section twelve shall be paid such compensation, not exceeding the sum of fifteen hundred dollars each, per annum, in such manner and at such times as the council may determine. [66 v. 228, § 473.]

Compensation.

SEC. 15. The council of any city or village may provide by ordinance for the appointment of a suitable number of inspectors, for all purposes not otherwise provided for, who shall hold their office for the term of three years, and for issuing licenses to such inspectors, and regulate the fees to be paid them for their services. [66 v. 228, § 474.]

Inspectors for other purposes may be appointed.

CHAPTER 11.

PLATS.

SUBDIVISION I. *Original Plats.*
SUBDIVISION II. *Vacating Plats.*
SUBDIVISION III. *Revision of Plats.*
SUBDIVISION IV. *Lost or Destroyed Records.*

SUBDIVISION I.

SECTION
1. How hamlet or village laid out.
2. What the plat thereof to contain.
3. Corner stone to be planted.
4. Acknowledgment and record of plat.
5. Plat of subdivisions.
6. Penalty against making record contrary to this chapter.
7. Penalty for selling lots contrary to this chapter.
8. Fee in county, except as in section five.
9. Penalty for neglect to plant corner stone, etc.
10. Penalty for disposing of lots before provisions of this chapter complied.
11. Where county seat located, directors to lay out village.

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12. Vacation of town plat.
13. Application, how made, and notice thereof.
14. When courts may alter or vacate plat.
15. Interested persons may be made parties.
16. Commons changed into streets; when and how.
17. Clerk's fees.
18. Assessment of damages.

SUBDIVISION III.

19. Who shall revise and renumber lots.
20. Mode of renumbering, etc.
21. To be assessed and legally known by their new numbers.
22. How expenses of renumbering paid.
23. How additions or subdivisions are to be numbered after such revision.
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SUBDIVISION IV.

25. Application to restore lost or destroyed records.
26. Publication of notice of such application.
27. County commissioners to appoint surveyor; his duties.
28. Record of plat and certificate.
29. Record of proceedings by county auditor.

SUBDIVISION I. ORIGINAL PLATS.

Proprietor to cause plat of proposed village, etc., to be made.

SECTION 1. When any person wishes to lay out a hamlet or village, or subdivision or addition to any municipal corporation, he shall cause it to be surveyed, and a plat or map of it made by a competent surveyor; in which plat or map shall be particularly described and set forth the streets, alleys, commons, or public grounds, and all in-lots and outlots and fractional lots within or adjacent to such hamlet or village, the description to include the courses, boundaries and extent. [29 v. 350, § 1; S. & C. 1482: 47 v. 52; S. & C. 1489.]

What such plat shall contain.

SEC. 2. All the in-lots intended for sale shall be numbered in progressive numbers, or by the squares in which they are situated, and their precise length and width shall be stated on such plat or map; and all out-lots which do not exceed ten acres in size, shall in like manner be surveyed and numbered, and their precise length and width stated on the plat or map, together with any streets, alleys, or roads which divide or border on the same. [29 v. 350, § 2; S. & C. 1482.]

Corner stone to be planted.

SEC. 3. The proprietor of the hamlet or village, at the time of surveying and laying it out, shall plant and fix, at the corner of the public ground, or a public lot, if any there be, and if there be none, then at the corner of one of the in-lots, and at the corner of each out-lot, a good and sufficient stone, of such size and dimensions, and in such manner, as the surveyor shall direct, for a corner from which to make future surveys; and the point or points where the same may be found shall be designated on the plat or map. [29 v. 350, § 3; S. & C. 1482.]

Plat to be acknowledged and recorded.

SEC. 4. After the plat or map is completed, it shall be certified by the surveyor, and acknowledged by the owner or owners before some officer authorized to take the acknowledgment of deeds, who shall certify his official act on the plat or map; and if any owner is a non-resident of the state, his agent, authorized by writing, may make such acknowledgment; and such plat or map, and if the execution is by agent, his written authority, shall thereupon be recorded in the office of the county recorder. [29 v. 350, § 4; S. & C. 1482.]

Plat of subdivisions;

SEC. 5. A proprietor of lots or grounds in a municipal corporation, who subdivides or lays the same out for sale, shall cause to be made an accurate map or plat of such subdivision, describing with certainty all grounds laid out or granted for streets, alleys, ways, commons, or other public uses; also, all lots sold, or intended for sale, by progressive numbers, or by the squares in which they are situated, and the precise length and width of each lot sold, or intended for sale; which map or plat shall be subscribed by such proprietor, or his agent, duly authorized by writing, acknowledged before an officer authorized to take the acknowledgment of deeds, who shall certify the acknowledgment of the instrument, and recorded in the office of the recorder of the county; and thereupon the map or plat so recorded shall be deemed a sufficient conveyance to vest in the municipal corporation the fee of the parcel or parcels of land designated or intended for streets, alleys, ways, commons, or other public uses, to be held in the corporate name in trust to and for the uses and purposes in the instrument set forth and expressed, designated, or intended: provided, that no such map or plat of any addition within the limits of any municipal corporation, when there are no record plats adopted by a platting commission or board of public works,

its acknowledgment

and record.

Fee in corporation except as section eight.

Plat to correspond with maps of platting commission.

shall be recorded until the engineer of the municipal corporation certifies that the streets, as laid down on the plats of such addition, correspond with those laid down on the recorded plats of the platting commission or board of public works, and when there are streets laid down in addition to those adopted by a platting commission or board of public works, as in any municipal corporation where no platting commission is or has been in existence, no such plat shall be recorded until the same shall have been approved by the council of such municipal corporation. [73 v. 60, § 6.]

When to be approved by council.

Penalty against making record contrary to this chapter.

SEC. 6. Any county recorder who records such map or plat contrary to the provisions of this chapter, shall forfeit and pay any sum not more than five hundred dollars nor less than one hundred dollars, to be recovered with costs in a civil action, in the name and for the use of the county, by the prosecuting attorney. [73 v. 61, § 3.]

Penalty for selling lots contrary to this chapter.

SEC. 7. If a proprietor, or his agent or attorney, sells any lot or lots in any plan of subdivision of, or addition to the lots originally laid out in a municipal corporation, before a map or plat of such subdivision or addition shall have been recorded, as herein required, such proprietor, agent, or attorney shall forfeit and pay for each lot sold the sum of fifty dollars, to be recovered with costs, in a civil action, in the name and for the use of the municipal corporation, before any court of competent jurisdiction, at the suit of the solicitor or any citizen of the corporation. [29 v. 350, § 7; S. & C. 1482.]

Fee in county, except as in section five.

SEC. 8. The plats or maps, other than those mentioned in the fifth section of this chapter, shall be deemed in law a sufficient conveyance to vest the fee simple of all such parcels of land as are therein expressed, named, or intended for public use, in the county in which the hamlet or village is situated, for the uses and purposes therein named, expressed or intended, and for no other use or purpose whatever. [29 v. 350, § 8; S. & C. 1482.]

Penalty for neglect to plant corner stone, etc.

SEC. 9. If any person lays out a hamlet or village, or addition to a municipal corporation, and neglects to plant the corner stones therein, or causes the same to be surveyed or platted in any other manner than that which is prescribed in this chapter, he shall forfeit and pay the sum of one hundred dollars and costs of suit, to be recovered in a civil action, in the name of the county treasurer, for the use of the county. [29 v. 350, § 9; S. & C. 1482.]

Penalty for disposing of lot before provisions of chapter complied with.

SEC. 10. If any person disposes of, or offers for sale, or leases for a time exceeding five years, any in-lot or out-lot, or any part of either, in any hamlet or village, whether incorporated or not, or in any addition to any municipal corporation, before the requisitions of this title are complied with, he shall forfeit and pay the sum of twenty-five dollars for each lot or part of lot so sold, or offered for sale, or leased, to be recovered, with costs, in a civil action, in the name of the

county treasurer, for the use of the county. [29 v. 350, § 10; S. & C. 1482.]

Directors to lay out village where county seat located; how governed; penalties.

SEC. 11. The directors appointed by the court of common pleas, to lay out a village, where a seat of justice has been located on lands upon which no municipal corporation is situated, shall be governed by the provisions of this chapter, and liable to the same penalties prescribed in the sixth section thereof. [29 v. 350, § 11; S. & C. 1482.]

SUBDIVISION II. VACATING PLATS.

Vacation of town plat.

SEC. 12. The court of common pleas, upon the application of two-thirds of the proprietors thereof, shall have power to alter or vacate the plat of any municipal corporation, addition thereto, or parts thereof, within the county, as hereinafter specified. [38 v. 32, § 1; S. & C. 1488.]

Application; how made and notice thereof.

SEC. 13. All applications for vacating or altering any plat, addition, or parts thereof, shall be in writing, in which the petitioners shall set forth, specifically, the plat, addition, or part to be vacated or altered, which application shall be filed with the clerk of the court of common pleas of the county forty days before the next term of the court to which the application is intended to be made, and shall give thirty days' notice in writing; one of which notices shall be put up in some public place in the township where such town plat, addition, or parts thereof may be situated, and one on the court house door; and thirty days' notice shall be given in some newspaper printed in the county, and of general circulation therein; or if no newspaper is printed in such county, then in a newspaper having the greatest general circulation therein; which notices shall set forth briefly the part or parts of the plat or addition to be vacated. [38 v. 32, § 4; S. & C. 1488.]

When court may alter or vacate plat.

SEC. 14. If the petitioners produce to the court satisfactory evidence that the notice required by the preceding section has been given, and that two-thirds of all the persons owning lots or parts thereof in the corporation or the addition, as the case may be, or their authorized agents or attorneys, have made application to have the whole or a part of such corporation or addition, altered or vacated, the court shall, in its discretion, proceed to alter or vacate such corporation or addition, or any part of either, as the case may be; and the proceedings shall be recorded by the clerk, in the records of the court, a copy of which record shall be made and certified under the seal of the court, by the clerk thereof, and shall, by the parties applying for such vacation or alteration, within thirty days from the rising of the court, be deposited with the recorder of the county, who shall record the same: provided, that the vacation of any municipal corporation or addition, or part thereof, shall not vacate any part of a state or county road. [29 v. 352, § 3; S. & C. 1486.]

SEC. 15. At the term at which the notice shall be given,

Any person feeling interested may be made party defendant.

as is provided for in section thirteen, or at any subsequent term during the pendency of the application, any person feeling interested in the proceedings, may, upon motion, be made a party defendant to the application; in which case, upon final hearing, the party succeeding shall have judgment against the other, for the costs of the proceedings, and execution may issue therefor as in other cases. [29 v. 352, § 4; S. & C. 1487.]

Commons may be changed into streets; when and how.

SEC. 16. On application made, and notice given according to the provisions of this subdivision, the court of common pleas shall have power to change any commons that may be included in the plat of any municipal corporation into streets, and to cause such change to be recorded as is provided by section fourteen. [29 v. 352, § 6; S. & C. 1487.]

Clerk's fees.

SEC. 17. The clerk of the court shall be entitled, for recording a plat required to be recorded under the provisions of this chapter, and for other services required of him, the same fees as are allowed to him for similar services by the provisions regulating his fees. [29 v. 352, § 5; S. & C. 1487.]

Application for vacation and assessment of damages.

SEC. 18. If the court is of opinion that any person owning any lot in such plat, addition, or parts thereof, proposed to be vacated or altered, not assenting thereto, will sustain damage thereby, it may proceed to hear proof in reference thereto, and may render judgment against the petitioners for such damages as it may think proper and just, and the same shall be assessed by the court against the petitioners ratably, according to the value of the property owned by the petitioners, as the same stands taxed on the tax-list of said county; and when necessary, the court shall appoint a guardian ad litem for all minors or persons of insane mind, who may be interested in the premises; and the judgment of the court vacating such plat, addition, or parts thereof, shall be conditional upon the payment of the damages thus assessed. [38 v. 32, §§ 2, 3; S. & C. 1488.]

SUBDIVISION III. REVISION OF PLATS.

Who shall revise and renumber lots.

SEC. 19. Where the lots of any municipal corporation are not numbered consecutively upon the original plat thereof, and the plats of additions thereto, or subdivisions thereof, it shall be lawful for the auditor and recorder of the county in which such municipal corporation may be situate, in conjunction with some person to be appointed by the mayor of such municipal corporation, to make a revision of the numbers of all the in-lots and out-lots of such municipal corporation, as the same stand upon record, and to number anew all the lots, so that the in-lots shall have but one consecutive series of numbers, beginning with number one; and the out-lots shall have but one similar series of numbers, also beginning with number one. [46 v. 34, § 1; S. & C. 1489.]

Mode of renumbering, etc.

SEC. 20. Such auditor and recorder, with their associate, to be appointed as aforesaid, shall make a schedule of all the in-lots of any such municipal corporation, beginning with the original plat thereof, setting down the lots in the same order of their numbers, and placing opposite thereto the new numbers which shall be assigned to the respective lots, following in the same manner with the plats of addition and subdivision, according to their priority in dates of record, so that the first column shall contain the old numbers of the in-lots in their consecutive order, and the second column shall exhibit opposite to such numbers respectively, the new numbers assigned to each of said lots; and in the same manner, they shall make a schedule of the out-lots; such schedule shall accurately and distinctly indicate the plat in which such in-lot or out-lot originally stands upon record; and it shall be the duty of the auditor and recorder to place such schedule on record in their respective offices. [46 v. 34, § 2; S. & C. 1489.]

Shall be assessed and legally known by their new numbers.

SEC. 21. When the revision and renumbering of the lots in any such municipal corporation have been made, and the schedule thereof recorded, as provided in the preceding section, the lots shall be assessed and entered upon the tax list for taxation, according to their new numbers; and in all the operations of the assessment and collection of taxes they shall be lawfully known and designated by the new numbers given to them under the authority of this subdivision; and all conveyances of the same made by the new numbers shall be sufficient to pass the title. [46 v. 34, § 3; S. & C. 1489.]

How expenses of renumbering paid.

SEC. 22. When such revision and renumbering are done at the request of the corporate authority, of any such municipal corporation, the expenses shall be paid by such corporation; but the county commissioners of any county in which any unincorporated hamlet or village may be situated, shall have authority to direct the auditor and recorder to make such revision and renumbering of such unincorporated hamlet or village, and cause the expenses thereof to be paid out of the county treasury; and they may direct the auditor and recorder to make such revision and renumbering of an incorporated hamlet or village, if the commissioners are of opinion that such revision and renumbering are necessary for convenience and efficiency in taxation. [46 v. 34, § 4; S. & C., 1489.]

How additions or subdivisions are to be numbered after such revision.

SEC. 23. After the revision is made and recorded, as hereinbefore provided, every person who lays off lots as an addition to such municipal corporation, or who makes a subdivision of lots therein, shall number the lots so divided upon his plat in regular consecutive numbers, commencing with the next number after the highest number of such in-lots or out-lots, as the same shall be ascertained by the recorder from a careful examination of the original records and revisions. [46 v. 34, § 5; S. & C. 1489.]

Compensation.

SEC. 24. The auditor, recorder, and their associate, shall each receive the sum of two dollars per day for their services under this subdivision. [46 v. 34, § 6; S. & C. 1489.]

SUBDIVISION IV. LOST OR DESTROYED RECORDS.

Application to supply lost or destroyed records.

SEC. 25. It shall be lawful for any ten persons, their agents or attorneys, owning or being interested in any lots of land in any municipal corporation, where the original plat, or any addition thereto has been recorded in the records of the county in which such municipal corporation is situated, and the records and original plat thereof have been lost or destroyed, to make application in writing to the county commissioners of such county to have the records of the plat or plats so lost or destroyed supplied, which application shall be filed with the auditor of such county. [70 v. 65, § 1.]

Publication of notice of such application.

SEC. 26. Upon the filing of the application, it shall be the duty of the auditor of such county to give notice, by publication for two consecutive weeks in some newspaper published and of general circulation in the county, or if there be no newspaper published in such county, then in some newspaper of general circulation therein, of the filing of the application as aforesaid, and also to notify the county commissioners thereof. [70 v. 65, § 2.]

County commissioners to appoint surveyor, etc.

SEC. 27. It shall be the duty of the commissioners of such county, upon the filing of the application, and the giving of the notice thereof, as aforesaid, forthwith to employ a competent surveyor, who, after being duly sworn to well and faithfully discharge the duties assigned him, shall proceed to re-plat such municipal corporation according to the original plan or plat of the same; and for the purpose of enabling him more easily to find the lines and corners of streets, lanes, alleys, and lots, such surveyor may call and examine witnesses, under oath or otherwise, and when he shall have fully performed all the duties assigned him, and made a plat of such municipal corporation, he shall make and attach his certificate to such plat that the same is a correct copy of the original plat of such municipal corporation, as he verily believes, together with the costs and expenses of making the same, and forthwith file it with the auditor of the county. [70 v. 65, § 3.]

Duties of surveyor.

Record of plat and certificat

SEC. 28. Upon the filing of the plat and certificate by the surveyor, the commissioners of the county shall cause the same to be recorded in the office of the recorder of the county; and when the plat and certificate shall have been recorded, the record, or a copy thereof, certified to by the recorder, shall be prima facie evidence of the plat of the municipal corporation, in all the courts of this state. [70 v. 66, § 4.]

Record of proceedings by county auditor.

SEC. 29. It shall be the duty of the auditor of such county to keep a full and complete record of the proceedings, as aforesaid, in the commissioners' journal, and for which he shall receive such compensation as is allowed by law for similar

services; and the surveyor and recorder aforesaid shall receive and be paid out of the county fund of such county, on the order of the county auditor, for their services, such fees as are allowed by law for similar work. [70 v. 65, § 5.]

CHAPTER 12.

PLATTING COMMISSION.

SECTION
1. Council to appoint commissions to plat lands, etc.
2. Board, how constituted; compensation; term; vacancy.
3. Board, how constituted in Cleveland and Toledo; compensation; term; vacancy.
4. To employ engineers, assistants, etc.
5. Powers and duties of board.
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10. Joint commission by adjoining municipal corporations.
11. Amendment of plans.
12. Division of territory to be platted.
13. Members of commissions in office to remain.
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Council to appoint commissions to plat lands, etc.

SECTION 1. Council shall have power in any municipal corporation, except in cities of the first grade of the first class, whenever it shall be, in its opinion, expedient, and whenever the corporate limits shall be enlarged, to appoint a commission to plat such portions of the territory within its limits, in which the necessary or convenient streets or alleys have not already been accepted by the corporation so as to become public streets, as it may, by resolution, declare, or the whole of such territory, if it is deemed proper. [68 v. 36, § 1.]

Board, how constituted; compensation; term; vacancy.

SEC. 2. Such commission shall consist of five members, except in cities of the second and third grades of the first class, where it shall be organized as is provided in the next following section, to be appointed by the council, who shall serve without compensation, and shall hold their offices until the completion of their work, unless removed by council; and council shall have power to fill all vacancies caused by removal or otherwise. [68 v. 36, § 1.]

Board, how constituted in Cleveland and Toledo; compensation; term; vacancy.

SEC. 3. In cities of the second and third grades of the first class, such commission shall consist of three members, to be appointed by the mayor and confirmed by the council, who shall receive such compensation as the council shall provide, and shall hold their office until the completion of their work, unless removed by council; and council, upon the recommendation of the mayor, shall have power to fill all vacancies. [71 v. 116, § 1.]

To employ engineers, assistants, etc.

SEC. 4. The commission shall have power to employ an engineer, and such assistants as they may find necessary, and fix their salaries within limits to be prescribed by council. [68 v. 36, § 1: 71 v. 116, § 1.]

Powers and duties of board.

SEC. 5. It shall be the duty of such commission to cause to be made a plat of the territory which they are ordered to lay out, as soon as the same can be conveniently done, showing the location of the streets and alleys already dedicated, and those proposed; and for the purpose of making the necessary surveys, they shall have power to enter upon all property within the limits of the corporation. [68 v. 36, § 1: 71 v. 116, § 1.]

Notice of completion of plans to be published and plans exhibited.

SEC. 6. When the whole plan, or any portion thereof, is completed, or when the location of any avenue, street, roadway, or alley has been finally determined upon by the commission, a plat of the plan, avenue, street, roadway, or alley shall be placed in the office of the city civil engineer for the inspection of persons interested, and notice that it is ready for inspection shall be published in one or more newspapers of general circulation within such municipal corporation, for six consecutive weeks. [68 v. 36, § 1: 71 v. 116, § 1.]

Commission to hear objections to plans and make alterations.

SEC. 7. During such six weeks the commission shall hold sessions at least once each week, at the time and place stated in the advertisement, and at such other times and places as it may deem proper, to hear any objections that may be urged against any portion of the plat, or the location of any avenue, street, roadway, or alley; and such alterations may be made as the commission shall deem proper. [68 v. 36, § 1: 71 v. 116, § 1.]

Copies of plans to be deposited in county recorder's and city engineer's offices.

SEC. 8. At the end of the time aforesaid, the commission shall cause copies of the plat, as finally adopted, to be prepared, and such monuments or marks as it may think proper to be placed on the grounds, and shall deposit one copy, certified to by it, in the office of the county recorder, and another in the office of the city engineer, and such plan shall be deemed and taken to be the regularly adopted plan for streets and alleys in such territory; and no streets or alleys, except those laid down on such plan, shall subsequently be in any way accepted as public streets or alleys by the municipal corporation, nor shall any of the public funds be expended in the improvement or repair of streets or alleys subsequently laid out, and not on such plat: provided, however, that nothing herein shall be construed to prevent any municipal corporation from exercising the power of condemnation, in any of the cases where it is now or may be hereafter by law authorized to condemn and appropriate property to public use, although it be not shown as a street on such plat. [68 v. 36, § 1: 71 v. 116, § 1.]

SEC. 9. The owners of any portion of the ground so platted may at any time, by a declaration of their intention so to do, properly acknowledged and recorded in the county

recorder's office, accept such plan so far as it concerns their property; and such acceptance, or the selling of lots referring to the plan, or the streets and alleys therein laid out, shall be a statutory dedication of the streets and alleys in the property described in the acceptance, or of the streets or alleys called for in the description of the lots so sold, so far as the grantor has a right to dedicate the same. [68 v. 37, § 2.]

Acceptance of plan by owner; dedication of streets, etc.

SEC. 10. When municipal corporations adjoin each other, it shall be lawful for the councils of such municipal corporations to agree, in any manner they may determine, upon the appointment of a joint commission for the purposes of this chapter; and such commission, when appointed, shall have all the power over the territory of the municipal corporations described in the resolutions of the councils, that is hereby given to a commission appointed by a single council. [68 v. 37, § 3.]

Joint commission by adjoining municipal corporations.

SEC. 11. Plans can be amended after adoption, by like proceedings by which they were originally adopted. [68 v. 37, § 5.]

Amendment of plans.

SEC. 12. Any commission appointed under the provisions of this chapter, or of the acts of March 13, 1871, 68 v. 36, or April 20, 1874, 71 v. 116, is hereby authorized, when in its opinion expedient, to divide the territory to be platted into districts and subdistricts, having due regard to the natural configuration thereof, and to adopt plans for such districts and subdistricts separately, in such order as they may think just, by pursuing the formalities prescribed for the adoption of a plat; and the plats for any district or subdistrict so adopted, shall, when filed, form the plan of such district or subdistrict, as provided for in this chapter: provided, that the plan in such districts or subdistricts shall always be adopted with reference to the general plan of improvement of the whole territory. [68 v. 37, § 6.]

Division of territory to be platted.

SEC. 13. The members of any such commission appointed under the acts of March 13, 1871, 68 v. 36, or April 20, 1874, 71 v. 116, shall hold their office until the completion of their work, unless sooner removed by council.

Members of commissions in office to remain.

SEC. 14. The provisions of this chapter in regard to the appointment of commissioners shall not apply to cities of the first grade of the first class, but the duties herein devolved upon such commissioners shall be performed in such cities by the board of public works, provided for in chapter second, division seven, of this title. [73 v. 44, § 5.]

Exemption as to Cincinnati.

CHAPTER 13.

STREETS.

SUBDIVISION I. *Control—Dedication.*
SUBDIVISION II. *Vacation of streets by council.*
SUBDIVISION III. *Vacation of streets by courts.*
SUBDIVISION IV. *Labor upon streets—Tax.*

SUBDIVISION I.

SECTION
1. Council to have control of streets, etc.
2. Provision by ordinance for opening street, etc.
3. When turnpike or plank roads become street.
4. Cost of improving such turnpike or plank road.
5. Remedy for neglect to keep same in repair.
6. How turnpike or plank-road condemned for street purposes.
7. Adaptation of turnpike or plank road to corporation uses, etc.
8. Right of toll not to be impaired.
9. Use of national road by city or village as street.
10. Dedication of streets; acceptance by council necessary.
11. Power of villages to procure material for improvements.

SUBDIVISION II.

SECTION
12. Vacation of streets, change of name, etc.
13. Notice of application to be published, etc.
14. Effect of order of vacation, etc.

SUBDIVISION III.

SECTION
15. Vacation or establishment of street or alley by court.
16. Petition for vacation or establishment, and notice thereof.
17. Street not to be closed until damages paid.

SUBDIVISION IV.

SECTION
18. Labor upon streets—who liable, etc.
19. Penalty, etc., for refusal to perform labor.
20. Road districts and street commissioners.
21. Road taxes, how collected and applied.
22. Attachment of contiguous territory for road purposes.
23. Collection of fines, forfeitures, etc.
24. Exemption from provisions of this subdivision.

SUBDIVISION I. CONTROL—DEDICATION.

Council to have control of streets, etc.

SECTION 1. The council shall have the care, supervision and control of all public highways, streets, avenues, alleys, sidewalks, public grounds, and bridges within the corporation, and shall cause the same to be kept open and in repair, and free from nuisance. [66 v. 222, § 439.]

Provision to be made by ordinance for opening street, etc.

SEC. 2. When it is deemed necessary by the council of any municipal incorporation to open, extend, straighten, narrow, or widen any street, alley, or public highway within the limits of such corporation, the council shall provide by ordinance for the same; such ordinance shall briefly, and in general terms, describe the property, if any, to be appropriated for such purposes; and the proceeding for such appropriation shall be as provided in chapter three, division seven, of this title. [70 v. 127, § 583.]

When turnpike or plank road becomes street.

SEC. 3. When any turnpike or plank-road terminates within the corporate limits, any portion of it so included therein shall become a public street of the corporation, and shall be maintained and kept in repair as other streets; and the council may cause the same to be condemned and appropriated for use as such, according to the provisions of chapter three, division seven, of this title. [66 v. 236, § 510.]

Cost of improving turnpikes, etc.

SEC. 4. When any portion of a turnpike or plank-road, or the control thereof, is required by a municipal corporation, or when any arrangement is made with the company owning the same for the improvement or repair thereof, provision for the cost, and for improving and keeping such turnpike or road in repair, shall be made, as is provided with respect to the streets and other highways of the corporation. [66 v. 250, § 597.]

Remedy for neglect of corporation to keep turnpike, etc., in repair.

SEC. 5. If a municipal corporation condemn any portion of a turnpike or plank-road, and fail to keep the portion so condemned in as good condition and repair as is required by the charter of the company, the directors of the company may, by writ of mandamus, compel the corporation to perform that duty. [72 v. 164, § 598.]

How turnpike or plank-road condemned for street purposes.

SEC. 6. If any city has extended or hereafter extends its limits so as to include therein a portion of any turnpike or plank-road, without purchasing or condemning the same, the council shall, within six months after the mayor is notified in writing that such company demands compensation therefor, proceed in the manner prescribed in chapter three, division seven, of this title, to cause such portion of such turnpike or plank-road to be condemned for street purposes; on failure of such council so to proceed, the president of such turnpike or plank-road company, if authorized by the directors thereof, may file an application in the court of common pleas of the proper county, setting forth the facts aforesaid, and asking that the value of such portion of the turnpike or plank-road may be assessed by a jury; the cause shall be conducted to final judgment in the manner provided in said last mentioned chapter, so far as the same is applicable, and such city shall pay the compensation awarded by the jury, with interest, and cost, in such proceeding, within one year after date of the rendition of the verdict, and when the compensation awarded has been paid, the title to such portion of such turnpike or plank-road shall vest in the city; and for the purpose of providing means to pay for the same, the city

council of any city of the first or second grade of the second class, may levy a tax in addition to the amount now limited by law. [72 v. 164, § 598.]

Adaptation of turnpike or plank-road to corporation uses, etc.

SEC. 7. When the road of any turnpike or plank-road company passes through or terminates in any municipal corporation, the council or trustees shall have power, with the consent of the company, to make any improvement or repair of such road, additional to the improvement or repair required by law of the company, that, in the opinion of the council or trustees, will better adapt such road to use as a street of the corporation. [66 v. 251, § 599.]

Right of toll not to be impaired.

SEC. 8. The right of any company to take toll at any toll-gate established in the corporation, shall not be impaired by anything in this title contained, except where the road of the company has been duly appropriated, and compensation made therefor, or the rights of the company in the road have been surrendered by agreement. [66 v. 251, § 600: 66 v. 36.]

Use of national road by city or village as street.

Agreement with county commissioners to keep same in repair.

SEC. 9. The council of any city or village through which the national road passes may, after filing with the county commissioners an agreement in writing, authorized by the council, and signed by the president thereof, binding itself to keep such road in such repair as is contemplated by the act or acts of congress ceding to the state of Ohio the jurisdiction and control of such portion of said road as lies within this state, take under their care and control so much of the road as passes through the corporate limits of such city or village, and use and occupy the same as a street or streets for such city or village; and when such road is so taken, the same shall be kept in the repair aforesaid, at the proper cost and expense of the city or village. [70 v. 194.]

Dedication of streets; acceptance by council necessary.

SEC. 10. No street or alley which has been or may be dedicated to public use by the proprietor of ground in any corporation, shall be deemed a public street or alley, or under the care or control of the council, unless the dedication is accepted and confirmed by an ordinance specially passed for such purpose. [66 v. 222, § 440.]

Power of villages to procure material to improve streets.

SEC. 11. The councils of villages, where material for graveling and macadamizing the streets must be transported by rail, shall have like power with county commissioners in case of turnpike roads. [67 v. 52, § 2.]

SUBDIVISION II. VACATION OF STREETS BY COUNCIL.

Vacation of streets, change of name, etc.

SEC. 12. The council of any city or village, on petition by any person owning a lot in the corporation, praying that a street or alley in the immediate vicinity of such lot may be vacated or narrowed, or the name thereof changed, may, upon hearing, and upon being satisfied that there is good cause for such change of name, vacation, or narrowing, that it will not be detrimental to the general interest, and that the same should be made, declare by ordinance such street or

alley vacated, narrowed, or the name thereof changed. [67 v. 78, § 491.]

Notice of application to be published, etc.

SEC. 13. No street or alley shall be vacated or narrowed as aforesaid, unless notice of the pendency and prayer of the petition be given by publishing the same in some newspaper published or of general circulation in such municipal corporation, for six consecutive weeks preceding action on such petition, or, where no newspaper is published in the corporation, by posting the notice in three public places therein six weeks preceding such action; and action thereon shall take place within three months after the completion of the notice. [67 v. 78, § 492.]

Effect of order of vacation, etc.

SEC. 14. The order of the council vacating or narrowing any street or alley which has been dedicated to public use by the proprietor, shall, to the extent to which the same is vacated or narrowed, operate as a revocation of the acceptance thereof by the council; but the right of way and easement therein of any lot owner shall not be impaired thereby. [66 v. 232, § 493.]

SUBDIVISION III. VACATION OF STREETS BY COURT.

Vacation or establishment of street or alley by court.

SEC. 15. On petition filed in the court of common pleas by any person owning a lot in an incorporated or unincorporated hamlet or village, for the establishment or vacation of a street or alley in the immediate vicinity of such lot, the court, upon hearing, and being satisfied that it will conduce to the general interests of such hamlet or village, may declare such street or alley established or vacated; but the remedy shall be in addition to those prescribed in this title. [37 v. 44, § 1; S. & C. 1487.]

Petition for vacation or establishment and notice thereof.

SEC. 16. In all cases where the application is made in the manner and for the purpose mentioned in the last section, the petition shall be filed in the office of the clerk of the court at least forty days previous to the next term of the court, and the petitioners shall also give notice in some newspaper printed in the county, and of general circulation therein, of the filing of such petition, and the substance and prayer thereof; and if any person other than a petitioner owning a lot in the immediate vicinity of such street or alley, prayed to be established or vacated, claims that he will sustain damage thereby, the court may proceed to hear proof in reference thereto, and may render judgment against the petitioners for such damages as it may think just, and the same shall be assessed by the court against the petitioners ratably according to the value of the property owned by them as the same stands taxed on the tax-list of the county; and a jury may be demanded as in other cases, and when necessary, the court shall appoint a guardian ad litem for all minors, or persons of insane mind, who may be interested in the premises. [37 v. 44, § 2; S. & C. 1487.]

council of any city of the first or second grade of the second class, may levy a tax in addition to the amount now limited by law. [72 v. 164, § 598.]

Adaptation of turnpike or plank-road to corporation uses, etc.

SEC. 7. When the road of any turnpike or plank-road company passes through or terminates in any municipal corporation, the council or trustees shall have power, with the consent of the company, to make any improvement or repair of such road, additional to the improvement or repair required by law of the company, that, in the opinion of the council or trustees, will better adapt such road to use as a street of the corporation. [66 v. 251, § 599.]

Right of toll not to be impaired.

SEC. 8. The right of any company to take toll at any toll-gate established in the corporation, shall not be impaired by anything in this title contained, except where the road of the company has been duly appropriated, and compensation made therefor, or the rights of the company in the road have been surrendered by agreement. [66 v. 251, § 600: 66 v. 36.]

Use of national road by city or village as street.

Agreement with county commissioners to keep same in repair.

SEC. 9. The council of any city or village through which the national road passes may, after filing with the county commissioners an agreement in writing, authorized by the council, and signed by the president thereof, binding itself to keep such road in such repair as is contemplated by the act or acts of congress ceding to the state of Ohio the jurisdiction and control of such portion of said road as lies within this state, take under their care and control so much of the road as passes through the corporate limits of such city or village, and use and occupy the same as a street or streets for such city or village; and when such road is so taken, the same shall be kept in the repair aforesaid, at the proper cost and expense of the city or village. [70 v. 194.]

Dedication of streets; acceptance by council necessary.

SEC. 10. No street or alley which has been or may be dedicated to public use by the proprietor of ground in any corporation, shall be deemed a public street or alley, or under the care or control of the council, unless the dedication is accepted and confirmed by an ordinance specially passed for such purpose. [66 v. 222, § 440.]

Power of villages to procure material to improve streets.

SEC. 11. The councils of villages, where material for graveling and macadamizing the streets must be transported by rail, shall have like power with county commissioners in case of turnpike roads. [67 v. 52, § 2.]

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alley vacated, narrowed, or the name thereof changed. [67 v. 78, § 491.]

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Effect of order of vacation, etc.

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SUBDIVISION III. VACATION OF STREETS BY COURT.

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Street not to be closed until damages paid.

SEC. 17. A street or alley so declared vacated, under the provisions of this subdivision, shall not be closed or obstructed until the damages so assessed shall have been fully paid to the persons entitled to the same. [37 v. 44, § 3; S. & C. 1487.]

SUBDIVISION IV. LABOR UPON STREET TAX.

Labor upon streets—who liable, etc.

SEC. 18. The council of any municipal corporation may require each able-bodied male person between the ages of twenty-one and fifty-five years, resident of the corporation, or territory attached as in this subdivision provided, to perform by himself, or substitute, in each year, two days' labor upon the streets and alleys of such corporation, or upon the public roads or highways that lie within such attached territory, which labor shall be in lieu of the two days' labor required to be performed upon roads and highways: provided, that active members of volunteer engine companies not exceeding sixty-four, of hook and ladder companies not exceeding thirty, and of hose companies not exceeding twenty, shall be exempt from the performance of such labor during such membership, and, having served faithfully as such for five consecutive years, shall be exempt for five years thereafter; and provided further, that such labor may be commuted by the payment of three dollars, to be expended where the labor would have been applied. [67 v. 77, § 484: 69 v. 54, § 1.]

Penalty, etc., for refusal to perform labor.

SEC. 19. Upon refusal to perform such work under the proper street commissioner, or other officer appointed by the council, the delinquent shall be liable to the same fines, penalties, and forfeitures as are provided against persons refusing to perform two days' labor upon the roads and highways in other cases; and the same shall be recovered in the name of the corporation, before the mayor thereof. [66 v. 231, § 485.]

Road districts and street commissioners.

SEC. 20. The council shall have power to form road districts within the limits of the corporation, and contiguous territory attached as aforesaid, and to appoint suitable street commissioners, or other proper officers, for any length of time, not exceeding two years, for such districts, or for the whole limits of such corporation, and the contiguous territory attached as aforesaid, who shall be governed in the performance of their duties by the by-laws and ordinances of the corporation. [66 v. 231, § 486.]

Road taxes, how collected and applied.

SEC. 21. No tax assessed upon property within the territory attached to any corporation as aforesaid, shall be applied otherwise than within the territory in which the same is assessed; and all taxes charged for road purposes on the property within the limits of the corporation, or the territory so attached, and collected by the county treasurer, shall be paid over to the corporation treasurer, to be specially appropriated by the council to street and road purposes within the corpor-

ate limits and territory so attached; and the trustees of the township in which such territory is located, and the council, may agree upon a different distribution or division of the funds. [66 v. 231, § 487.]

Attachment of contiguous territory for road purposes.

SEC. 22. It shall be the duty of the council, and the trustees of townships, respectively, in which any such corporation is situated, when the same has not already been done, where from the sparseness of population the public interest requires it, to attach to the corporation any territory lying contiguous thereto, for the purposes mentioned in this subdivision; and any portion of territory so attached may be detached, and replaced under the control of the township trustees for road purposes, by the council, with the concurrence of the township trustees. [67 v. 78, § 488.]

Collections of fines, forfeitures, etc.

SEC. 23. The street commissioners, or other proper officers, shall have power to collect by suit, all fines, forfeitures, and penalties arising under the provisions of this subdivision, and they are hereby authorized and required, before their annual settlement with the council, to prosecute to final judgment all persons neglecting or refusing to comply with the provisions of this subdivision, from whom, in the opinion of such street commissioners, or other proper officers, such fine, penalty, or forfeiture can be collected. [66 v. 231, § 489.]

Exemption from provisions of this subdivision.

SEC. 24. Persons who are or may be exempt from performing labor on the public highway, shall not be subject to the provisions of this subdivision. [66 v. 231, § 490.]

CHAPTER 14.

WHARVES AND DOCKS.

SECTION
1. Council may establish wharves, docks, etc.
2. Wharves, etc., must have uniform grade.
3. Control of shore; appointment of harbor-masters, etc.
4. Copies of surveys to be prima facie evidence, etc.

Council may establish wharves, docks, etc.

SECTION 1. The council of any city or village may establish, construct, repair, control, and regulate landing-places, wharves, docks, piers, and basins; establish, control, and regulate the grades of wharves and landing-places, and fix the rates of landing, wharfage, and dockage, and use, for the purposes aforesaid, any public landing, or any property belonging to or under the control of the corporation. [66 v. 222, § 442.]

Wharves, etc., must have uniform grade.

SEC. 2. All wharves or landing places hereafter constructed, shall conform to a uniform grade to be established by the council; and it shall be unlawful for the owner, lessee, or occupant of such property to construct any wharf or landing-place without first obtaining the consent of the council, and conforming to the established grade. [66 v. 223, § 443.]

Control of shore; appointment of harbor-masters, etc.

SEC. 3 The council shall have the use and control, for the above purpose, of the shore or bank of any lake or river, not the property of individuals, to the extent and in any manner that the state can grant such use or control; and the power to appoint harbor-masters, wharf-masters, port-wardens, and other officers usual or proper for regulation of the navigation, trade, or commerce of the corporation, to define their duties and powers, and fix their compensation. [66 v. 223, § 444.]

Copies of surveys to be prima facie evidence, etc.

SEC. 4. Copies of examinations and surveys, and of the proceedings of any port-warden, in the discharge of the duties of his office, certified under his hand and seal, shall be prima facie evidence of the matters therein stated. [66 v. 223, § 445.]

CHAPTER 15.

LICENSES, AND HEREIN OF SHOWS, AUCTIONEERS, PAWNBROKERS, FERRIES, ETC.

SECTION
1. General licensing powers of council.
2. Licensing of vehicles, undertakers, etc.
3. Council to prescribe width of tires, fix rates of transportation, etc.
4. Pawnbrokers must be licensed.
5. To keep record of transactions, etc.
6. License, regulation, etc., of ferries.

General licensing powers of council.

SECTION 1. The council of any city or village may license all exhibitors of shows, and performances of every kind not prohibited by law, hawkers, and peddlers, auctioneers of horses and other animals in the highways or public grounds of the corporation, venders of gunpowder and other explosives, taverns and houses of public entertainment, and hucksters in the public streets or markets; and in granting such license, may exact and receive such sum of money as it may think expedient. [66 v. 223, § 447.]

Licensing of vehicles, undertakers, etc.

SEC. 2. The council may also license the owners of vehicles used for the transportation of persons or property, for hire, and all undertakers and owners of hearses; but the owner of any such vehicle may be made liable for the breach of any ordinance regulating the conduct of the drivers thereof. [66 v. 224, § 448.]

Council may prescribe width of tires, fix rate of transportation, etc.

SEC. 3. The council may prescribe the width of the tires of all wagons, carts, drays, and other vehicles used in the transportation of persons from one part of the corporation to another, or in the transportation of coal, wood, stone, lumber, iron, or other articles in the corporation; and establish stands for hackney coaches, cabs, or omnibusses, enforce the observance and use thereof, and fix the rates and prices for the transportation of persons and property in such coaches

or other vehicles from one part of the [corporation] transportation to another. [66 v. 222, § 441.]

Pawnbrokers must be licensed.

SEC. 4. Any person carrying on the business of pawnbroker, or of loaning money on personal property, in any city or village, shall take out a license from the city or village in which he does business, which license shall be fixed by ordinance at a cost not to exceed two hundred dollars per annum. [66 v. 224, § 449.]

To keep record of transactions, etc.

SEC. 5. The person so licensed shall keep a correct list and description, in a book for that purpose, of all articles pledged or deposited with him, or on which advances of money have been made, or which may be purchased by him, which list and description shall at all times be open to the inspection of the chief or superintendent of police of the corporation, or of a police officer deputed by him, or by the mayor, to make such inspection; and he shall at all times, when required by the police officer or mayor aforesaid, produce and show any article so listed and described which may be in his possession; and he shall also register in such book the name and place of residence of the depositor, and time when the deposit was made. [66 v. 224, § 450.]

License, regulation, etc., of ferries.

SEC. 6. The council of any city or village shall have the exclusive power to establish, regulate, and license ferries, from such corporation, or any landing therein, to the opposite shore, or from one part of the corporation to another; and in granting such license, to impose such reasonable terms and restrictions, in relation to the keeping of such ferries, and the time, manner, and rates of the carriage and transportation of persons and property, as may be proper; and to provide for the revocation of any such license, and for the punishment by proper fines and penalties, of the violation of any ordinance prohibiting unlicensed ferries, or regulating those established and licensed. [66 v. 223, § 446.]

CHAPTER 16.

LEASE OR SALE OF CORPORATE PROPERTY.

SECTION
1. Authority to lease or sell corporate property.
2. Disposition of fund so raised.
3. Chapter not to apply to certain classes of property.

Authority to lease or sell corporate property.

SECTION 1. The council of any city or village may, upon the recommendation of the board of improvements, or board of public works, lease or convey, in such manner and for such sum as may be provided by ordinance, any real estate, or interest therein, any wharf or public landing, or any buildings or parts thereof, and also dispose of any material from any street, alley, avenue, sewer, bridge, ship channel, public ground or park, belonging to the corporation. [66 v. 264, § 676.]

Disposition of fund so raised.

SEC. 2. The fund arising therefrom shall be paid into the corporation treasury, to the credit of the particular fund by which such property was acquired, if there be any such fund, and if no such fund exist, then to the general fund of the corporation [66 v. 264, § 677.]

Chapter not to apply to certain classes of property.

SEC. 3. The provisions of this chapter shall not apply to the sale of school property, except with the concurrence of the board of education, nor of property acquired for infirmaries, houses of refuge and correction, and work houses except with the concurrence of the directors of those institutions, nor of property acquired for water-works purposes, except with the concurrence of the trustees of water-works, or board of public works, nor of any real estate, or the buildings thereon devoted to hospitals, or other benevolent institutions owned or managed by the corporation. [66 v. 264, § 678.]

CHAPTER 17.

INJURIES FROM EXCAVATIONS—DAMAGES.

SECTION
1. Damage by excavation to be recovered by civil action.
2. Depth of excavation allowable.

Damage by excavation to be recovered by civil action.

SECTION 1. If the owner or possessor of any lot or land, in any city or village, digs, or causes to be dug, any cellar, pit, vault, or excavation, to a greater depth than nine feet below the curb of the street on which such lot or land abuts, or, if there be no curb, below the surface of the adjoining lots, and, by such excavation, causes any damage to any wall, house, or other building, upon the lots adjoining thereto, such owner or possessor shall be liable, in a civil action, to the party injured, to the full amount of the damage aforesaid. [66 v. 232, § 494.]

Depth of excavation allowable.

SEC. 2. Such owner or possessor may dig, or cause to be dug, any such cellar, pit, or excavation, to the full depth of any foundation wall of any building upon the adjoining lots, or to the full depth of nine feet below the established grade of the street whereon such lot abuts, without reference to the depth of adjoining foundation walls, without incurring the liability prescribed in this chapter. [66 v. 232, § 495.]

NINTH DIVISION: FINANCE AND TAXATION.

CHAPTER 1. FINANCE AND TAXATION.
CHAPTER 2. THE POWER TO BORROW MONEY AND ISSUE BONDS.
CHAPTER 3. SINKING FUNDS.

CHAPTER 1.

FINANCE AND TAXATION.

SECTION
1. Taxation in hamlets.
2. Rates of taxation in cities and villages, for general purposes.
3. Levies for special purposes.
4. Construction of limitations.
5. Anticipation of tax in certain cases.
6. Levy for payment of bonds.
7. Levy of a greater tax to be submitted to vote.
8. Levy of tax for public buildings.
9. Maximum of tax allowable in cities and villages.
10. How claims to be paid.
11. Percentage of tax to be certified to county auditor.
12. Corporation taxes; how collected.
13. Levy and collections of taxes within the corporation.
14. Delinquent taxes to be certified to county auditor, etc.
15. Collection of taxes to pay bonds, etc., issued for public improvements.
16. Collection to pay bonds for sewerage purposes.
17. Taxes on lands laid of[off] into lots.
18. Debts not to exceed taxes, and other revenue.
19. Restriction on power to create debts.

Taxation in hamlets.

SECTION 1. The trustees of hamlets shall have power to levy, annually, upon the taxable property therein, such rate of taxes as may be necessary for the purposes mentioned in chapter one, of division three, of this title, not exceeding ten mills on the dollar, for all purposes, in any one year; and the taxes so levied shall be collected in the same manner as the taxes of other municipal corporations. [66 v. 257, § 639.]

Rates of taxation in cities and villages, for general purposes.

SEC. 2. The council of a city or village shall have power to levy, annually, for the general purposes of the corporation, such amount of taxes, on each dollar of valuation of taxable property in the corporation on the tax-list, as may be determined upon by it, not exceeding the following rates:

In a village, one-half of one mill.

In a city of the first or second grade of the second class, one mill.

In a city of the third or fourth grade of the second class, two mills.

In a city of the first grade of the first class, four and one-half mills.

In a city of the second grade of the first class, two mills.

In a city of the third grade of the first class, two mills. [68 v. 133, § 640.]

Levies for special purposes.

SEC. 3. In addition to the taxes specified in the last section, the council in each city and village may levy taxes, annually, for any improvement authorized by this title, and for the following purposes:

1. For the real estate and right of way for any improvement authorized by this title.

2. For sanitary and street-cleaning purposes, and for street improvements and repairs. And in cities of the second grade of the first class, such part of the funds raised for any of these purposes as the council deems necessary shall, upon the recommendation of the board of improvements, be appropriated monthly for keeping in repair the paved streets of such cities.

3. For improving highways leading into the corporation.

4. For wharves and landings on navigable lakes and rivers, and keeping the same in repair.

5. For constructing levees and embankments, and keeping the same in repair.

6 For constructing and maintaining bridges.

7. For improving any water-course passing through the corporation.

8. For the erection and maintenance of infirmaries, and support of the out-door poor.

9. For the erection and maintenance of work-houses.

10. For erecting, enlarging, or improving corporation prisons.

11. For the erection of houses of refuge and correction, and for the expense of maintaining and administering the same, above the receipts arising from the labor of persons confined therein, such sum as may be necessary to meet the same.

12. For the erection and repair of market-houses, and for lighting, watching, and cleaning the same.

13. For erecting, enlarging, and improving hospitals.

14. For erecting, enlarging, and improving halls and public offices.

15. For the erection of school buildings, and such rate as may be prescribed by law for schools and school-house purposes.

16. For the erection of buildings required by the fire department, the construction of reservoirs, the purchase of steam or other fire engines, and other apparatus, and for keeping the same in repair, and for the support of the fire department.

17. For erecting, enlarging, or improving water-works, and for supplying the corporation with water.

18. For erecting, enlarging, and improving gas-works, and for lighting the corporation.

19. For grounds for cemeteries and park purposes, inclosing, improving, embellishing, enlarging, and keeping the same in repair.

20. For the construction and repair of sewers, drains and ditches; and where the corporation is divided into sewer districts, the levy shall be by such districts.

21. For the payment of the marshal and police authorized by this title.

22. To pay the interest on the public debt of the corporation, and to provide a sinking fund therefor, a sum sufficient to satisfy the interest as it accrues annually, to be applied to no other purpose.

23. For the purpose of keeping up and maintaining a free public library and reading-room; but no tax shall be levied for this purpose unless a suitable lot and building therefor, supplied with library furniture and fixtures, shall first be donated or leased to, or rented by the corporation.

The council shall determine the amount to be levied for each of the purposes herein specified, and such part thereof must be placed on the tax-list and collected annually, as it shall by ordinance prescribe. [68 v. 133, 134, §§ 641, 644.]

Construction of limitations.

SEC. 4. The limitations contained in section two of this chapter shall not be construed to prohibit special assessments for improvements provided for by this title, nor the levy of a tax to raise means for the payment of the principal and interest of the debts of the corporation, nor of any tax authorized by law for special purposes. [66 v. 258, § 642.]

Anticipation of tax in certain cases.

SEC. 5. The council may anticipate the tax authorized to be levied for sanitary and street-cleaning purposes, by temporary loans; but no loan shall be made in excess of the gross amount of revenues raised by taxation for expenditures for such purposes during the then current year, except in cases of extraordinary emergency caused by the general prevalence of an epidemic; and money so borrowed, when paid into the treasury, shall be applied first in payment of such loan. [73 v. 125, § 643.]

Levy for payment of bonds.

SEC. 6. When the bonds of the corporation have been issued in anticipation of a tax provided for in section three, the same tax may be levied to raise means for the payment thereof as is authorized for the purpose for which they were issued. [66 v. 259, § 645.]

Levy of a greater tax to be submitted to vote.

SEC. 7. A greater tax than that authorized by this chapter may be levied for either of the purposes mentioned therein, if the proposition to make such levy shall have been first submitted to a vote of the electors of the corporation under an ordinance prescribing the time, place, and manner of voting on the same, and approved by a majority of those voting on the proposition. [66 v. 259, § 646.]

Levy of tax for public buildings.

SEC. 8. When it becomes necessary for a city to provide grounds, and erect thereon a court-house, jail, or public offices, for the use of the county, or to contribute to either purpose, the council may levy a tax therefor of one mill upon the taxable property of the corporation; but such tax shall not be levied until the same is approved by a majority

of the electors of the corporation, in the manner pointed out in the preceding section. [66 v. 259, § 647.]

Maximum of tax allowable in cities and villages.

SEC. 9. The aggregate of all taxes levied or ordered by any municipal corporation, including the levy for general purposes, above the tax for county and state purposes, and excluding the tax for schools and school-house purposes, shall not exceed in any one year:

In Cincinnati.

In cities of the first grade of the first class, twelve mills, and such further rate as may be necessary to provide for the payment of the interest, and to create a sinking fund for the redemption of bonds issued, and that may be issued under the act relating to the Cincinnati Southern Railway, passed May 4, 1869, 66 v. 80, and the acts amendatory thereof and supplementary thereto.

In Cleveland.

In cities of the second grade of the first class, eleven mills, and such further rate as may be necessary to pay the interest on the public debt, and for cemetery purposes, as provided for by law.

In Toledo.

In cities of the third grade of the first class, nineteen mills: provided, however, that out of such funds the interest on the indebtedness of such corporation shall be first paid.

In Columbus and Dayton.

In cities of the first and second grades of the second class, nine and five-tenths mills.

In cities of the third grade of the second class, twelve mills.

In cities of the fourth grade of the second class, nine mills.

In villages of the first class, eight mills, and in all other villages, ten mills on each dollar of the value of any property as valued for taxation on the county tax-list: provided, that the council shall annually, at the time the rate of levy is fixed, provide by ordinance for the distribution of the tax among the several departments of the municipal corporation, in such proportion to their needs as council may deem necessary; and at no time thereafter shall the amounts therein specified, as necessary for the purposes named, be changed; and all transfers of funds from one account to another are hereby expressly prohibited. [74 v. 112, § 648]

How claims to be paid.

SEC. 10. No claim against a municipal corporation shall be paid by the treasurer except upon the warrant of the auditor, and in all municipal corporations where there is no auditor, on the warrant of the clerk; and all boards of trustees, directors, or commissioners, having charge of the expenditure of city funds, shall certify claims against their respective departments to the auditor for payment: provided, that in cities of the third grade of the first class, the auditor, under such rules and regulations as may be adopted by the council, may draw his warrant on the treasurer in his own favor, for the aggregate amounts due employés of the city in the various departments, and disburse the money received upon such warrant to pay the claims of the em-

ployés on pay-rolls, taking receipts therefor; and it shall be the duty of the auditor. in addition to his other duties, to keep accurate and detailed accounts of the receipts and expenditures of the city in all its departments, and for all purposes. [74 v. 112, § 648]

Percentage of tax to be certified to county auditor.

SEC. 11. The council shall cause to be certified to the auditor of the county, on or before the first Monday in June, annually, the percentage by it levied on the real and personal property in the corporation returned on the grand levy, who shall place the same on the tax-list for the county in the same manner as township taxes are by law placed thereon; the ordinance prescribing the levy shall specify distinctly each and every purpose for which the levy is made, and the per cent. thereof; and when a corporation has been formed, or boundaries of a corporation extended, subsequent to that time, the council shall determine whether it would be right and expedient to assess a tax on the taxable property in such territory for the current year; and if the council determines to make such levy, it shall also determine the rate, and time of payment, and certify the same to the county auditor, which tax shall be placed on the duplicate and collected as other taxes. [73 v. 125, § 649: 74 v. 112, § 648]

Corporation taxes—how collected.

SEC. 12. The taxes of the corporation shall be collected by the county treasurer, and paid into the treasury of the corporation in the same manner, and under the same laws, rules, and regulations as are or may be prescribed for the collection and paying over of state and county taxes; and the corporation treasurer, or other person or officer having charge of the taxes paid over by the county treasurer, shall keep a separate account with each fund for which taxes are assessed, which account shall at all times be open to inspection. [73 v. 125, § 650.]

Levy and collection of taxes within corporations.

SEC. 13. Nothing in this chapter shall be construed to prevent any corporation that may elect to do so, from levying and collecting taxes, as authorized by this title, within the corporation; and when any corporation elects to levy and collect such taxes, the council shall provide, by ordinance, for the appointment and control of the necessary officers to carry the same into effect; which officers shall have the power, and be under all the restrictions, of county auditors, county treasurers, and township assessors, so far as the same are applicable to them, except in the sale of delinquent lands. [67 v. 85, § 651.]

Delinquent taxes to be certified to county auditor, etc.

SEC. 14. The council may order the clerk, or other proper officer of the council, to certify any delinquent tax assessed by the corporation to the auditor of the county, which delinquent taxes the auditor shall place on the list of the county, in a separate column, and the same shall be collected in like manner as delinquent state and county taxes. [66 v. 260, § 652.]

Collection of taxes to pay bonds, etc., issued for public improvements.

SEC. 15. If any special assessment is made, as authorized in chapter five, of the seventh division of this title, and bonds, notes, or certificates of indebtedness of the corporation are issued in anticipation of the collection thereof, the ordinance directing the assessment shall specify the amount by the foot front or according to valuation, or otherwise, to be paid, and where the assessment is payable in installments, the amount to be paid annually; and it shall be the duty of the auditor or clerk of the corporation, on or before the second Monday in September, annually, to certify such assessment to the council, to be by it confirmed, and thereupon it shall direct the clerk to certify the same to the county auditor, who shall place the same on the tax-list, and the county treasurer shall collect the assessment in the same manner as other taxes are collected, and when collected he shall pay the same to the treasurer of the corporation, to be by him applied to the payment of such bonds, notes, or certificates of indebtedness, and interest thereon, and for no other purpose; and for the purpose of enforcing the collection of the assessment, the county treasurer shall have the same power and authority now allowed by law for the collection of state and county taxes. [66 v. 260, § 653.]

Collection to pay bonds for sewerage purposes.

SEC. 16. If a special assessment is made for sewerage purposes, as authorized by the fifth chapter of the seventh division of this title, and the bonds of the corporation are issued in anticipation of the collection thereof, such assessment shall be certified to the council, confirmed, certified to the county auditor, and collected at the same time and in the same manner, as provided in the preceding section, and when collected shall be applied to the payment of the bonds, and to no other purpose. [66 v. 260, § 654.]

Taxes on lands laid off into lots, etc.

SEC. 17. The council may impose taxes upon parcels of land laid off into lots, and sold or leased by metes and bounds, or other description, though the same may not have been platted and recorded. [66 v. 260, § 655.]

Debts not to exceed taxes and other revenue.

SEC. 18. The council shall not make any appropriation, nor contract debts or obligations of any description, for either of the purposes specified in the levy of the council, as provided for in section eleven of this chapter, exceeding the amount of taxes, and revenue from other sources, for the current year, received for such purposes; and the money belonging to one fund shall not be transferred to another, nor used for any purpose except that for which it was collected or received. [73 v. 126, § 656.]

Restriction on power to create debts.

SEC. 19. In cities of the first grade of the first class, no ordinance or other order for the expenditure of money shall be passed by the city council, or a board, officer, or commissioner having control over the moneys of the city, without stating specifically in such ordinance or order the items of expense to be made under it, and no such ordinance or order shall take effect until the auditor of the city shall certify to

the city council that there is money in the treasury specially set apart to meet such expenditure; and all expenditures greater than the amount specified in such ordinance or order shall be absolutely void, and no party whatever shall have any claim or demand against the city therefor; nor shall the city council, or a board, officer, or commissioner of the city, have any power to waive or qualify the limits fixed by such ordinance or order, or fasten upon the city any liability whatever for any excess of such limits, or release any party from an exact compliance with his contract under such ordinance or order; nor shall any member of the city council, or board of aldermen of the city, or a board, officer, or commissioner of the city, have or hold any interest in a contract executed on behalf of the city, nor any interest in the expenditure of money on the part of the city other than his fixed compensation; and a violation of any provision of this section shall disqualify the party violating it from holding any office of trust or profit in the city, and render him liable to the city for all sums of money or other thing he may receive against the provisions of this section, and if in office he shall be dismissed therefrom. [71 v. 80, § 3.]

CHAPTER 2.

THE POWER TO BORROW MONEY AND ISSUE BONDS.

SECTION
1. Loans in anticipation of revenue.
2. Issue of bonds, etc., to extend time of payment.
3. Restrictions as to contracts, appropriations, and expenditures.
4. Bonds to be explicit on their face.
5. Borrowing money in anticipation of special assessment.
6. Bonds for money borrowed in anticipation.
7. Form and requisites of bonds, etc.
8. Bonds may have coupons attached.
9. Character of bonds in certain cases.
10. Bonds not be sold below par; sale of bonds.
11. Disposition of unappropriated funds.

SECTION 1. Loans may be made by municipal corporations in anticipation of the general revenue fund; but the aggregate amount of such loans in any fiscal year shall not exceed, in a hamlet, one thousand dollars, in a village, fifteen thousand dollars, in a city of the second class, fifty thousand dollars, in a city of the third grade of the first class, one hundred thousand dollars, and in any other city of the first class, two hundred thousand dollars: provided, however, that no new loans shall be made until the loan previously made under this section has been fully paid and canceled; and provided further, that no loan as aforesaid shall be made

Loan in anticipation of revenue.

during any fiscal year in anticipation of such fund exceeding the amount of taxes, and revenue from other sources, due and payable into the fund for the fiscal year. [74 v. 65, § 661.]

Issue of bonds, etc., to extend time of payment.

SEC. 2. The trustees or council of any municipal corporation, for the purpose of extending the time of the payment of any indebtedness, which, from its limits of taxation, such corporation is unable to pay at maturity, shall have power to issue bonds of such corporation, or borrow money, so as to change but not increase the indebtedness, in such amounts, and for such length of time, and at such rate of interest as the council may deem proper, not to exceed the rate of eight per centum per annum. [70 v. 5, § 662.]

Restrictions as to contracts, appropriations and expenditures.

SEC. 3. No contract, agreement, or other obligation involving the expenditure of money, shall be entered into, nor shall any ordinance, resolution, or order for the appropriation or expenditure of money be passed by the council, or by any board or officer of a municipal corporation, unless the auditor of the corporation—and if there is no auditor the clerk thereof—shall first certify that the money required for the contract, agreement, or other obligation, or to pay the appropriation or expenditure, is in the treasury, to the credit of the fund from which it is to be drawn, and not appropriated for any other purpose, which certificate shall be filed, and immediately recorded; and the sums so certified shall not thereafter be considered unappropriated, until the corporation is discharged from the contract, agreement, or obligation, or so long as the ordinance, resolution, or order is in force; and all contracts, agreements, or other obligations, and all ordinances, resolutions, and orders, entered into or passed contrary to the provisions of this section, shall be void. [73 v. 126, § 663.]

Bonds to be explicit on their face.

SEC. 4. All bonds issued under authority of this chapter shall express upon their face the purpose for which they were issued, and under what ordinance. [66 v. 262, § 664.]

Borrowing money in anticipation of special assessment.

SEC. 5. The council of any municipal corporation, shall also have power to borrow money, at a rate of interest not exceeding seven per centum per annum, in anticipation of the collection of any special assessment, and to issue the bonds of the corporation therefor, in the manner and form herein provided. [66 v. 262, § 665.]

Bonds for money borrowed in anticipation.

SEC. 6. If the council makes any special assessment payable in annual installments, as authorized in the fifth chapter of the seventh division of this title, it shall have authority to borrow, upon the credit of the corporation, a sum of money sufficient to pay the estimated cost and expense of the improvement, and shall have authority to issue bonds, notes, or certificates of indebtedness, pledging the faith and credit of the corporation for the payment of the principal and interest of such bonds, notes, or certificates of indebtedness, which interest shall not exceed the rate of seven per centum per annum, payable annually; and the bonds, notes,

or certificates of indebtedness shall not in any case be sold for less than their par value [67 v. 86, § 666.]

Form and requisites of bonds, etc.

SEC. 7. Bonds, notes, or certificates of indebtedness, issued as aforesaid, shall have the name of the street, or portion thereof, so improved, and for which the same were issued, legibly written or printed upon them, and shall be signed by the mayor, and by the auditor or clerk, and be sealed with the seal of the corporation. [66 v. 86, § 666.]

Bonds may have coupons attached.

SEC. 8. Bonds issued as provided in this chapter may, in the discretion of the council, have interest coupons attached [66 v. 262, § 667.]

Character of bonds in certain cases.

SEC. 9. Where the corporation is divided into districts for sewerage purposes, bonds issued for money borrowed to pay the expense of constructing or repairing sewers in any such district, shall have the name and number of the district for which they are issued legibly written or printed upon them. [66 v. 262, § 668.]

Bonds not to be sold below par.

SEC. 10. In no case shall the bonds of the corporation be sold for less than their par value. All sales of bonds by any municipal corporation shall be to the highest and best bidder, after thirty days' notice in at least two newspapers of general circulation in the county where such municipal corporation is situated, setting forth the nature, amount, rate of interest, and length of time the bonds have to run, with time and place of sale. Additional notice may be published outside of such county on the order of council. [66 v. 263, § 670.]

Sale of bonds

Disposition of unappropriated funds.

SEC. 11. Any money belonging to the corporation and not specifically appropriated by law, shall be used for the purpose of reducing the funded debt of the corporation, if there be one; and if there be none, it shall be credited to the general improvement fund, except in cities of the first grade of the first class it shall be credited to the sinking fund.

CHAPTER 3.

SINKING FUND.

SECTION
1. Tax for creating a sinking fund.
2. Levy for sinking fund shall be upon property of districts benefited.
3. Such levy to be certified to auditor.
4. Board of trustees for sinking fund of Cincinnati.
5. Oath and bond of trustees.
6. Organization of board.
7. Meetings: record of proceedings.
8. Duty of trustees with respect to bonded indebtedness of city.
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SECTION
15. Duty of trustees with respect to Cincinnati Southern Railway bonds.
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Tax for creating a sinking fund.

SECTION 1. For the purpose of creating a sinking fund for the gradual extinguishment of the bonds and funded debt of a municipal corporation, the council may, annually, until payment of the bonds and funded debt be fully provided for, levy and collect, in addition to the other taxes of the corporation, a tax which shall not be less than one mill, nor exceeding three mills, upon the taxable property in the corporation, which tax shall be paid into the treasury, and applied, by order of the council, to the extinguishment of the bonds and funded debt, and to no other purpose whatever. [66 v. 263, § 672.]

Levy for sinking fund shall be upon property of districts benefited.

SEC. 2. The levy to provide a sinking fund for the redemption of bonds issued for sewerage purposes shall, where the corporation is divided into sewer districts, be upon the property of the district for which the bonds were issued. [66 v. 263, § 673.]

Such levy to be certified to auditor.

SEC. 3. The tax so levied shall be certified to the auditor of the county wherein the corporation is situated, to be placed on the county tax-list, and collected as other taxes; and such taxes shall be a lien on the property whereon they are assessed, the same as state and county taxes, and subject to the same penalties if delinquent. [66 v. 263, § 674.]

Appointment of board of trustees for sinking fund of Cincinnati.

SEC. 4. In cities of the first grade of the first class, there shall be a board, designated as the trustees of the sinking fund, composed of five citizens thereof, heretofore appointed by the judges of the superior court of the city, which trustees shall serve without compensation—one of whom was appointed to serve for one year, two for two years, and two for five years; and all trustees hereafter appointed shall serve for five years, except in case of vacancies, which shall be filled by the court for the unexpired time. [74 v. 157, § 1.]

Term of office.

Oath and bond of trustees.

SEC. 5. Before any person, appointed as a member of such commission, assumes the duties of his office, he shall give bond, in the sum of one hundred thousand dollars, with not less than two sureties, faithfully to discharge such duties. [74 v. 157, § 2.]

Organization of board.

SEC. 6. The trustees shall, immediately after their appointment and qualification, organize by appointing one of their number as president; the auditor of the city shall act as secretary; and the office of the board shall be in some place to be provided by the council, unless by a vote of the board some other place be provided by them without expense to the city. [74 v. 157, § 2.]

Meetings.

SEC. 7 Regular meetings shall be held on the third Monday of April, in each year; but meetings may be called by the president, or any three members of the board; the pro-

ceedings shall be recorded in a journal kept for that purpose, which shall at all times be open to the public; and all questions relating to the purchase or sale of securities, payment of bonds or interest, or involving the payment or appropriation of money, shall be decided by a viva voce vote, with the names of each member voting recorded on the journal, and no question shall be decided unless approved by a majority of the whole board. [74 v. 158, § 2]

Record of proceedings.

SEC. 8. The city auditor shall, upon demand of the board, report to it a full and detailed statement of the outstanding indebtedness of the city for bonds issued, and the board shall take charge of, and keep a full record of the same, and report to the council, at least once a year, a full and detailed statement of the same, together with a statement of their investments, and general financial business for the city, which shall be published in the annual report. [74 v. 158, § 3.]

Duty of trustees with respect to bonded indebtedness of city.

SEC. 9. The city auditor shall, upon the demand of the board, report to it balances belonging to the city, to the credit of the sinking fund, interest account, or for any bonds issued for or by the city; and all officers or persons having the same shall immediately pay the same over to the trustees of the sinking fund, who shall deposit them in such place as a majority of such board shall select. [74 v. 158, § 4.]

Auditor's report to trustees.

SEC. 10. The trustees of the sinking fund shall, in the month of May, in each year, or as soon thereafter as possible, certify to the city council the rate of tax necessary to provide a sinking fund for the future payment of the bonds issued by the city, which shall not exceed, in any year, the sum of one mill, nor be less than one-half a mill; also, the amount necessary to be levied to provide for the payment of the interest on all the bonded indebtedness of the city, and such further amount as may be necessary to provide a sinking fund for the final redemption of the Cincinnati Southern Railway bonds; and the city council shall place the several amounts so certified in the tax ordinance, before and in preference to any other item, and for the full amount certified. [74 v. 158, § 5.]

Report of trustees to council; duty of council.

SEC. 11. The trustees of the sinking fund shall invest all moneys received by them in bonds of the United States, state of Ohio, or city of Cincinnati, and all interest received by them shall be re-invested in like manner; and at no time shall there be over ten thousand dollars kept upon deposit, if investment can be made. [74 v. 158, § 6]

How funds to be invested.

SEC. 12. The trustees shall provide for the payment of all interest on the city bonded debt, and for bonds falling due, and for this purpose only may sell or use any of the securities or money in their possession. [74 v. 159, § 6]

Payment of interest and bonds falling due.

SEC. 13. Moneys shall only be drawn by check, signed by the president of the board, and attested by the clerk and at least two members of the board; all securities or evidences of debt held by the trustees for the city shall be deposited

How money, etc., to be drawn and deposited by trustees.

in the vault of some safety deposit company within such city, or if none exists therein, in one which shall be specially provided by them in some place of safety; and when so deposited, they shall be drawn only upon the written application of three members, and in the presence of at least two members of the board. [74 v. 159, § 7.]

Trustees to have charge of bonds issued for improvement of private property.

SEC. 14. The trustees shall have charge of and receive all moneys paid on bonds issued for the improvement of private property, or the city's portion of the same, and shall have power, in the name of the city, to enforce the payment of any claim due the city on the same. [74 v. 159, § 8.]

Duty of trustees with respect to Cincinnati Southern Railway bonds.

SEC. 15. Before the trustees fix the rate of taxation for the interest on the Cincinnati Southern Railway bonds, they may call upon the trustees of that road for a statement of the trust, and shall have power to enforce the production of their books and papers, and examine the same; and any securities or property which may be in their possession, and which is not necessary to the use of the road, shall be converted into money, and credited to the interest account of the road; and all moneys or valuable considerations which may be received by the trustees for the running of the road, or any part thereof, and which are not needed for the further construction of the same, shall be received by the trustees of the sinking fund, and credited to the interest account, as before provided. [74 v. 159, § 8.]

Trustees to collect rents, etc., due city.

SEC. 16. The trustees shall take charge of the collection of rents due to the city, for any property thereof which has been leased or rented by it, and collect the rents; and in case of failure to collect, shall, in the name of the city, prosecute the same in any court having jurisdiction; and it is hereby made the duty of the city solicitor to attend to such prosecutions; and all moneys so received shall be credited to the yearly interest account of the city, and invested as other funds. [74 v. 159, § 10.]

Power of trustees to make investigations, etc.

SEC. 17. The trustees may, and upon the written application of five freeholders or taxpayers of the city shall, investigate any branch or department of the city government, and any agency or depository, or trusteeship involving transactions affecting the sinking fund; and they may send for persons and papers, issue subpœnas, and enforce the attendance of witnesses, and examine the same under oath; and, if in the course of such investigation, the testimony of any witness whose personal attendance cannot be procured be desired, his deposition may be taken, and used in the investigation. They may employ, at a fair compensation, competent accountants to examine any books, papers, contracts, or other writings connected with any investigation. They shall report the result of all investigations to the mayor and city solicitor, and take such other action as they deem proper to protect the interests of the city. Witnesses, constables, and other officers in attendance at the investigations conducted under the provisions of this section shall be en-

titled to the fees and mileage prescribed by law for similar services; and all costs incurred under the provisions of this section shall be paid out of the sinking fund, and be reimbursed to the sinking fund out of the general fund of the city not otherwise appropriated.

Powers with respect to wharf property, etc.

SEC. 18. The trustees, on the approval of the board of public works, may, on giving not less than ten days' notice, by publication in two or more daily papers of general circulation in such city, receive bids for the lease of any wharf property, or other property not used for municipal purposes belonging to the city, on such terms and for such time as they deem for the best interests of the city, with power to reject any or all bids; and they may, within twenty days succeeding the expiration of such publication, lease any part of such property, at a rate not less than the maximum offered by any bid, without a re-advertisment. The board may also, in order to prevent loss of revenue during such advertisements and negotiations, rent such property from month to month, during such time.

TENTH DIVISION: ACTS REPEALED.

SECTION 1. The following acts and parts of acts are hereby repealed:

1. The act of April 16, 1857, entitled "an act to authorize the establishment of houses of refuge." S. & C. 687.
2. Section two of the act of March 29, 1859, entitled "an act supplementary to an act to regulate the election, contest of election, and the resignation of justices of the peace, passed March 11, 1853." S. & C. 766
3. The act of March 3, 1831, entitled, "an act to provide for the recording of town plats." S. & C. 1462.
4. The act of January 29, 1828, entitled "an act to provide for the vacating of town plats, and for other purposes." S. & C. 1466.
5. The act of March 5, 1839, entitled "an act to amend the act to provide for the vacation of town plats, and for other purposes, passed January 29, 1828." S. & C. 1467.
6. The act of February 19, 1840, entitled "an act to amend the act to provide for the vacating of town plats, and for other purposes." S. & C. 148
7. The act of March 22, 1849, entitled "an act to amend an act to provide for the recording of town plats, passed March 3, 1831." S. & C. 1469
8. The act of February 2, 1848, entitled "an act authorizing the numbering of lots in any city, town, or borough in this state to be revised."

S. & S. 783. 9. Section one of the act of April 2, 1866, entitled "an act to authorize the erection, improving, enlarging, or constructing additions to town halls, and to repeal an act therein named."

S. & S. 784. 10. The act of April 13, 1867, entitled "an act supplementary to an act passed April 2, 1866, entitled 'an act to authorize the erection, improving, enlargeing, or constructing additions to town halls, and to repeal an act therein named.'"

S. & S. 808. 11. The act of May 5, 1868, entitled "an act to provide for the organization, regulation and more efficient government of the police in cities of the first class, which have been advanced to that grade between decennial periods."

S. & S. 811. 12. The act of April 2, 1868, entitled "an act to amend 'an act authorizing the appointment of metropolitan police commissioners in cities of the first class, with a population less than one hundred thousand inhabitants at the last federal census,' passed April 5, 1866."

S. & S. 816. 13. The act of April 5, 1866, entitled "an act authorizing the appointment of metropolitan police commissioners, in cities of the first-class, with a population of less than one hundred thousand inhabitants at the last federal census."

S. & S. 877. 14. The act of April 5, 1867, entitled "an act to authorize cemetery associations and councils of incorporated villages to sell or incumber real estate."

S. & S. 904. 15. The act of March 20, 1867, entitled "an act authorizing treasurers of villages and townships to deposit their funds in banks, in certain cases."

66 v. 149. 16. The act of May 7, 1869, entitled "an act to provide for the organization and government of municipal corporations."

67 v. 7. 17. The act of February 10, 1870, entitled "an act supplementary to an act to provide for the organization and government of municipal corporations, passed May 7, 1869."

67 v. 33. 18. The act of April 6, 1870, entitled "an act to amend section 297 of an act entitled 'an act to provide for the organization and government of municipal corporations.'"

67 v. 52. 19. Section two of the act of April 14, 1870, entitled "an act to authorize county commissioners and councils of incorporated villages to contract for the delivery of material for the construction of roads, and the improvement of streets in certain cases."

67 v. 68. 20. The act of April 18, 1870, entitled "an act to amend an act entitled an act to provide for the organization and government of municipal corporations, passed May 7, 1869."

68 v. 36. 21. The act of March 13, 1871, entitled "an act to regulate the platting of lands and laying out of streets in municipal corporations."

68 v. 53. 22. The act of April 1, 1871, entitled "an act to amend section four hundred and ten of 'an act to provide for the organization and government of municipal corporations,' as the same was amended April 18, A.D. 1870."

23. The act of April 20, 1871, entitled "an act supplementary to an act to provide for the organization and government of municipal corporations, passed May 6, 1869." 68 v. 73.

24. The act of April 20, 1871, entitled "an act to exempt property in incorporated villages from taxation for cemetery purposes in certain cases." 68 v. 74.

25. The act of April 29, 1871, entitled "an act to authorize the inhabitants of a portion of an incorporated town or village to become detached from such town or village, and annexed to an adjoining city." 68 v. 85.

26. The act of April 29, 1871, entitled "an act to authorize the corporate authorities of cities to acquire lands by purchase, outside the corporate limits, for the purpose of a house of refuge and correction, and work-house." 68 v. 90.

27. The act of May 1, 1871, entitled, "an act for the regulation of parks in cities of the first class having a population of more than one hundred and fifty thousand inhabitants." 68 v. 98.

28. The act of May 1, 1871, entitled "an act to provide for the trial and removal of municipal officers from office." 68 v. 113.

29. The act of May 1, 1871, entitled "an act to authorize county commissioners to unite with cities in the erection and maintenance of work-houses." 68 v. 114.

30. The act of May 1, 1871, entitled, "an act to amend section sixty-seven of an act entitled 'an act to provide for the organization and government of municipal corporations,' passed May 7, 1869." 68 v. 115.

31. The act of May 2, 1871, entitled "an act to regulate the sale of real estate held by cemetery associations, and other corporations and parties named therein." 68 v. 124.

32. The act of May 2, 1871, entitled "an act to amend an act entitled 'an act to provide for the organization and government of municipal corporations,' passed May 7, 1869." 68 v. 130.

33. The act of May 2, 1871, entitled "an act limiting the rates of taxation in municipal corporations." 68 v. 133.

34. The act of March 7, 1872, entitled "an act to fix the fiscal year of departments in cities of the first class." 69 v. 20.

35. The act of March 7, 1872, entitled "an act to amend an act entitled 'an act to amend an act supplementary to an act to regulate the election, and contest of election, and the resignation of justices of the peace,' passed March 11, 1853, passed March 28, 1861." 69 v. 23.

36. The act of March 11, 1872, entitled "an act to amend section three hundred and fifty-two of an act entitled 'an act to provide for the organization and government of municipal corporations,' passed May 7, 1869." 69 v. 25.

37. The act of March 11, 1872, entitled "an act amendatory of and supplementary to an act entitled 'an act to amend an act authorizing the appointment of metropolitan police commissioners in cities of the first class with a population less than one hundred thousand inhabitants at the last federal census,' passed April 5, 1866, and amended April 2, 1868." 69 v. 28.

69 v. 47. 38. The act of March 23, 1872, entitled "an act to amend sections 428, 429, 432, and 433, of an act entitled 'an act to provide for the organization and government of municipal corporations,' passed May 7, 1869."

69 v. 64. 39. The act of April 4, 1872, entitled, "an act to amend sections sixty-one and sixty-two of an act entitled 'an act to provide for the organization and government of municipal corporations,' passed May 7, 1869, and amended April 20, 1871."

69 v. 181. 40. The act of April 29, 1872, entitled "an act to amend an act entitled 'an act to provide for the organization and government of municipal corporations,' passed May 7, 1869, and amended April 18, 1870.

69 v. 192. 41. The act of April 29, 1872, entitled "an act to amend section one hundred and seventeen of an act to provide for the organization and government of municipal corporations, passed May 7, 1869."

70 v. 5. 42. The act of January 13, 1873, entitled "an act to amend section six hundred and sixty-two of an act entitled 'an act to provide for the organization and government of municipal corporations,' passed May 7, 1869."

70 v. 11. 43. The act of January 22, 1873, entitled "an act to amend sections 342 and 344 of an act entitled 'an act to provide for the organization and government of municipal corporations,' passed May 7, 1869."

70 v. 16. 44. The act of January 29, 1873, entitled "an act to amend section three of an act passed February 10, 1870, supplementary to 'an act to provide for the organization and government of municipal corporations,' passed May 7, 1869."

70 v. 18. 45. The act of January 31, 1873, entitled "an act supplementary to 'an act to provide for the organization and government of municipal corporations,' passed May 7, 1869."

70 v. 55. 46. The act of March 7, 1873, entitled "an act to authorize and require township trustees, and city or village councils, to let or lease town halls in certain cases."

70 v. 63. 47. The act of March 12, 1873, entitled "an act to amend section five hundred and forty of the municipal code, as amended April 18, 1870."

70 v. 65. 48. The act of March 17, 1873, entitled "an act to provide for supplying lost or destroyed records of cities, towns, or villages."

70 v. 66. 49. The act of March 17, 1873, entitled "an act supplementary to an act entitled 'an act to amend sections 61, 271, 566, 570, and 663, and repeal section 669 of the municipal code.'"

70 v. 83. 50. The act of March 29, 1873, entitled "an act to amend section five hundred and sixty-two of an act to provide for the organization and government of municipal corporations, passed May 7, 1869, and as amended and took effect April 18, 1870."

70 v. 84. 51. The act of March 29, 1873, entitled "an act supplementary to an act entitled 'an act authorizing the appointment of metropolitan police commissioners in cities of the

first class with a population of less than one hundred thousand inhabitants at the last federal census,' passed April 5, 1866, as amended and supplemented April 7, 1868, and March 11, 1872, and to repeal an act therein named."

52. The act of April 2, 1873, entitled "an act to amend section 299 of an act entitled "an act to provide for the organization and government of municipal corporations,' passed May 7, 1869." 70 v. 100.

53. The act of April 12, 1873, entitled "an act to amend sections 539 and 583 of an act entitled 'an act to provide for the organization and government of municipal corporations,' passed May 7, 1869, as amended March 29, 1872." 70 v. 126.

54. The act of April 25, 1873, entitled "an act to amend an act entitled an act to amend an act entitled 'an act to provide for the organization and government of municipal corporations,' passed February 14, 1873." 70 v. 159.

55. The act of April 26, 1873, entitled "an act supplementary to an act entitled an act for the organization and government of municipal corporations, passed May 7, 1869." 70 v. 163.

56. The act of April 28, 1873, entitled "an act to amend section five hundred and eight of an act entitled 'an act for the organization and government of municipal corporations,' passed May 7, 1869." 70 v. 175.

57. The act of April 29, 1873, entitled "an act to create a board of fire commissioners in cities having a population exceeding ninety thousand inhabitants." 70 v. 188.

58. The act of May 3, 1873, entitled "an act to amend section one hundred and seventy-four of an act entitled an act to provide for the organization and government of municipal corporations, passed May 7, 1869, and as amended January 27, 1873." 70 v. 248.

59. The act of May 3, 1873, entitled "an act to amend section seven of an act entitled 'an act to provide for the organization and government of municipal corporations,' passed May 7, 1869, as amended April 20, 1871." 70 v. 252.

60. The act of May 3 1873, entitled "an act to amend section three hundred and ninety-two of an act entitled 'an act to provide for the organization and government of municipal corporations,' passed May 7, 1869." 70 v. 274.

61. The act of May 6, 1873, entitled "an act supplementary to the municipal code regulating surface drainage." 70 v. 292.

62. The act of March 30, 1874, entitled "an act to extend the provisions of an act entitled 'an act supplementary to an act to provide for the organization and government of municipal corporations,' passed February 10, 1870, amended January 29, 1873, to cities of the first class which have been advanced to that grade during decennial periods." 71 v. 49.

63. The act of April 3, 1874, entitled "an act supplementary to an act entitled an act supplementary to an act entitled 'an act authorizing the appointment of metropolitan police commissioners in cities of the first class, with a population less than one hundred thousand inhabitants at the 71 v. 63.

last federal census, passed April 5, 1866, as amended and supplemented April 7, 1868, and March 11, 1872, and to repeal an act therein named,' passed March 29, 1873."

71 v. 65. 64. The act of April 4, 1874, entitled "an act to amend sections nine and ten of an act entitled 'an act for the organization and government of municipal corporations,' passed May 7, 1869."

71 v. 71. 65. The act of April 15, 1874, entitled "an act to amend sections four hundred and thirty-five and four hundred and thirty-six of an act entitled 'an act to provide for the organization and government of municipal corporations,' passed May 7, 1869, and section four hundred and thirty-five, as amended April 18, 1870."

71 v. 76. 66. The act of April 16, 1874, entitled "an act to amend section No. 141 of an act entitled 'an act to provide for the organization and government of municipal corporations,' passed May 7, 1869."

71 v. 80. 67. Section three of the act of April 16, 1874, entitled "an act to authorize the issuing of bonds and to regulate the making of contracts in certain cities."

71 v. 109. 68. The act of April 18, 1874, entitled "an act to amend section three hundred and thirty-eight of an act entitled 'an act to provide for the organization and government of municipal corporations,' passed May 7, 1869."

71 v. 116. 69. The act of April 20, 1874, entitled "an act supplementary to an act entitled 'an act to regulate the platting of lands and laying out of streets in municipal corporations,' passed March 13, 1871."

71 v. 135. 70. The act of April 20, 1874, entitled "an act to amend section ten of an act supplementary to an act to provide for the organization and government of municipal corporations,' passed February 10, 1870."

71 v. 147. 71. The act of April 20, 1874, entitled "an act to amend an act entitled an act to provide for the organization and government of municipal corporations, passed May 7, 1869."

71 v. 158. 72. The act of April 20, 1874, entitled "an act to amend sections 306, 307, 318, and 325 of an act entitled 'an act for the organization and government of municipal corporations,' passed May 7, 1869."

72 v. 12. 73. The act of December 22, 1874, entitled "an act to amend section three hundred and two of an act entitled 'an act to provide for the organization and government of municipal corporations,' passed May 7, 1869."

72 v. 25. 74. The act of February 4, 1875, entitled "an act to amend section five hundred and fourteen of the municipal code."

72 v. 27. 75. The act of February 4, 1875, entitled "an act limiting the powers of certain official boards."

72 v. 42. 76. The act of February 26, 1875, entitled "an act to provide for appeals in civil actions taken from the mayor of any city or incorporated village situated in two or more counties."

77. The act of March 3, 1875, entitled "an act to amend sections seven hundred and twelve and seven hundred and sixteen of 'an act to provide for the organization and government of municipal corporations,' passed May 7, 1869, and to amend section seven hundred and fifteen of the above entitled act, as amended April 20, 1871." 72 v. 46.

78. The act of March 15, 1875, entitled "an act to amend an act to provide for the organization and government of municipal corporations, passed May 7, 1869." 72 v. 51.

79. The act of March 23, 1875, entitled "an act to amend section 298 of the municipal code." 72 v. 76.

80. The act of March 29, 1875, entitled "an act to amend section one hundred and ninety-nine of an act entitled 'an act to provide for the organization and government of municipal corporations,' passed May 7, 1869, as amended April 18, 1870." 72 v. 107.

81. The act of March 30, 1875, entitled "an act to provide for the improvement of streets and avenues in certain cities of the second class." 72 v. 153.

82. The act of March 30, 1875, entitled "an act to amend section 598 of the act entitled 'an act to provide for the organization and government of municipal corporations,' passed May 7, 1869." 72 v. 164.

83. The act of March 30, 1875, entitled "an act to amend section 602 of an act passed May 7, 1869, and took effect July 1, 1869, entitled 'an act to provide for the organization and government of municipal corporations,' as amended April 18, 1870." 72 v. 168.

84. The act of February 18, 1876, entitled "an act to amend section 592 of 'an act to provide for the organization and government of municipal corporations,' passed May 7, 1869." 73 v. 9.

85. The act of March 14, 1876, entitled "an act to amend section 581 of an act entitled 'an act to provide for the organization and government of municipal corporations,' passed May 7, 1869, as the same was amended by the act of April 18, 1870, and also to amend section 590 of the aforesaid act of May 7, 1869." 73 v. 24.

86. The act of March 15, 1876, entitled "an act to amend section twenty-four of an act passed March 30, 1875, to provide for the improvement of streets and avenues in certain cities of the second class." 73 v. 32.

87. The act of March 17, 1876, entitled "an act to create a board of public works in certain cities having a population of one hundred and fifty thousand and upwards at the last federal census." 73 v. 43.

88. The act of March 17, 1876, entitled "an act authorizing the election of a board of police commissioners, and consolidating the same with the board of health in cities of the first class with a population of less than one hundred and fifty thousand, and over ninety thousand inhabitants, at the last federal census, and to repeal certain acts." 73 v. 47.

73 v. 60. 89. The act of March 22, 1876, entitled "an act to amend an act entitled an act 'to amend the sixth section of an act entitled an act to provide for the recording of town plats,' passed March 3, 1831, took effect June 1, 1831, passed February 4, 1875, and to repeal said act of February 4, 1875."

73 v. 70. 90 The act of March 24, 1876, entitled "an act to regulate the police force in cities of the first class, and to repeal an act passed December 18, 1874, entitled 'an act for the better regulation of the police force in cities of the first class having a population of two hundred thousand and over,' and to repeal an act entitled 'an act to establish a board of police commissioners in certain cities of the first class,' passed March 29, 1873."

73 v. 76. 91. The act of March 27, 1876, entitled "an act to create a board of fire commissioners, and provide for the management of fire departments, in cities having a population not less than ninety thousand inhabitants, nor more than one hundred and fifty thousand inhabitants, at the last federal census, and repeal an act therein named."

73 v. 125. 92. The act of April 8, 1876, entitled "an act to amend sections 97, 643, 649, 650, and 656 of an act entitled 'an act to provide for the organization and government of municipal corporations,' passed May 7, 1869, and section six hundred and sixty-three of said act, as amended April 18, 1870."

73 v. 143. 93. The act of April 8, 1876, entitled "an act to amend section four hundred and ninety-six of an act entitled 'an act to provide for the organization and government of municipal corporations,' passed May 7, 1869."

73 v. 157. 94. The act of April 3, 1876, entitled "an act to amend section twenty-four of an act to provide for the organization and government of municipal corporations, passed May 7, 1869."

73 v. 165. 95. The act of April 8, 1876, entitled "an act to amend section nine of an act entitled 'an act for the organization and government of municipal corporations,' passed May 7, 1867, [1869] as amended April 4, 1874, and as amended January 29, 1876."

73 v. 167. 96. The act of April 11, 1876, entitled "an act to amend section six hundred and one of 'an act to provide for the organization and government of municipal corporations,' passed May 7, 1869, as amended April 29, 1873."

73 v. 170. 97. The act of April 11, 1876, entitled "an act to amend sections forty-nine and fifty-six of an act entitled 'an act to provide for the organization and government of municipal corporations,' passed May 7, 1869."

73 v. 171. 98. The act of April 11, 1876, entitled "an act to amend section five hundred and forty-three of the act entitled 'an act to provide for the organization and government of municipal corporations,' passed May 7, 1869, as amended May 2, 1871, March 30, 1874, and March 20, 1875."

73 v. 186. 99. The act of April 11, 1876, entitled "an act to amend section twelve of an act entitled 'an act to provide for the

improvement of streets and avenues in certain cities of the second class,' passed March 30, 1875, and found in Laws of Ohio, vol. 72, page 153 "

100. The act of April 11, 1876, entitled "an act to amend section fifty-four of an act entitled 'an act to provide for the organization and government of municipal corporations,' passed May 7, 1869." 73 v. 199.

101. Section one of the act of April 11, 1876, entitled "an act to authorize cities and incorporated villages, and boards of education, to accept bequests and carry out the conditions upon which the bequest is made." 73 v. 205.

102. The act of April 11, 1876, entitled "an act to amend section two hundred and seventy five of an act to provide for the organization and government of municipal corporations" 73 v. 211.

103. Section four of the act of April 12, 1876, entitled "an act to abolish the office of inspector of gas meters and illuminating gas, and to provide for the performance of the duties of that office by a clerk in the office of the secretary of state, and by municipal officials, being supplementary to an act passed April 6, 1866, entitled 'an act for the inspection of gas meters, the protection of gas consumers, and the protection and regulation of gas-light companies,' amended March 9, 1867." 73 v. 227.

104. The act of April 12, 1876, entitled "an act supplementary to an act entitled 'an act to provide for the organization and government of municipal corporations,' passed May 7, 1869, as the same was amended by the act of April 18, 1870, and entitled an act to amend an act entitled 'an act to provide for the organization and government of municipal corporations,' passed May 7, 1869, and also to amend section 590 of the aforesaid act of May 7, 1869, passed March 14, 1876." 73 v. 247.

105. The act of January 26, 1877, entitled "an act empowering the council of any city of the first class, with a population of less than one hundred and fifty thousand, and greater than ninety thousand inhabitants, at the last federal census, to lease lands for park purposes, and for the improvement of the same." 74 v. 9.

106. The act of March 1, 1877, entitled "an act to amend sections six hundred and ninety, six hundred and ninety-one, and six hundred and ninety-two of 'an act to provide for the organization and government of municipal corporations,' passed May 7, 1869." 74 v. 36.

107. The act of March 17, 1877, entitled "an act to amend sections one, two, four, five, seven, eight, nine, ten, eleven, twelve, fourteen, sixteen, and seventeen of an act entitled 'an act to regulate the police force in cities of the first class, and to repeal an act passed December 18, 1874, entitled an act for the better regulation of the police force in cities of the first class having a population of two hun- 74 v. 42.

dred thousand and over, and to repeal an act entitled an act to establish a board of police commissioners in certain cities of the first class,' passed March 29, 1873, passed March 24, 1876, and supplementary thereto."

74 v. 61. 108. The act of March 22, 1877, entitled "an act to amend section one of an act amendatory of an act entitled 'an act to provide for the safety of persons attending public assemblies,' passed April 13, 1865, amended May 12, 1868"

74 v. 65. 109. The act of March 22, 1877, entitled "an act to amend section six hundred and sixty-one of an act entitled 'an act to provide for the organization and government of municipal corporations,' passed May 7, 1869, and took effect July 1, 1869"

74 v. 74. 110. The act of March 31, 1877, entitled "an act to amend section sixty two of an act entitled 'an act to provide for the reorganization and government of municipal corporations,' passed May 7, 1869, as amended April 4, 1872."

74 v. 75. 111 The act of March 31, 1877, entitled "an act to require marshals of cities of the second class to keep a record of all the property that falls into their hands, and account for the same to the mayor."

74 v. 103. 112. The act of April 21, 1877, entitled "an act regarding the maintenance and repair of streets and alleys, etc., in cities of the first class having a population of more than ninety thousand and less than one hundred and fifty thousand inhabitants at the last federal census."

74 v. 112. 113. The act of April 24, 1877, entitled "an act to amend an act entitled an act limiting the rate of taxation in municipal corporations."

74 v. 114. 114. The act of April 24, 1877, entitled "an act to authorize the council of municipal corporations to require new bonds to be given by municipal officers in certain cases."

74 v. 132. 115. The act of April 27, 1877, entitled "an act to regulate the speed of railroad locomotives and cars within the corporate limits of any city, town, or village."

74 v. 136. 116. The act of April 27, 1877, entitled "an act to amend sections seventeen and eighteen of an act entitled 'an act authorizing the election of a board of police commissioners, and consolidating the same with the board of health, in cities of the first class with a population of less than one hundred and fifty thousand and over ninety thousand inhabitants at the last federal census, and to repeal certain acts."'

74 v. 142. 117. The act of April 27, 1877, entitled "an act to amend sections eighty and eighty-seven of an act entitled 'an act to provide for the organization and government of municipal corporations,' passed May 7, 1869."

74 v. 157. 118. The act of May 3, 1877, entitled "an act to create a board of trustees of the sinking fund in cities of the first class having a population of one hundred and eighty thousand or over."

74 v. 163. 119. The act of May 4, 1877, entitled "an act vesting the police commissioners with certain powers and duties of a-

board of health in cities of the second class having a population of more than thirty-one thousand and less than thirty-five thousand at the last federal census, and not having a board of health."

120 The act of May 5, 1877, entitled "an act to require inn and boarding house keepers to provide suitable and efficient fire escapes." 74 v. 176.

121. The act of May 5, 1877, entitled "an act supplementary to an act entitled 'an act supplementary to an act to provide for the organization and government of municipal corporations,' passed February 10, 1870." 74 v. 185.

122. The act of May 7, 1877, entitled "an act to amend section fifty one of the act passed May 7, 1869, entitled 'an act to provide for the organization and government of municipal corporations." 74 v. 198.

123. The act of February 14, 1878, entitled "an act to establish a board of fire commissioners in cities of the first class having a population of two hundred thousand and over, to repeal section fourteen of an act therein named, and for other purposes." 75 v. 5.

SEC. 2. This act shall take effect from its passage.

JAMES E NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed May 14, 1878.

TABLE

OF THE

SECTIONS OF THE MUNICIPAL CODE, 1869,

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[Senate Bill No. 49.]

AN ACT

To amend and revise the statutes relating to taxation, to be known as title thirteen, part one, of the act to revise and consolidate the general statutes.

Be it enacted by the General Assembly of the State of Ohio

TITLE XIII.

TAXATION.

CHAPTER 1. DEFINITIONS, AND PROPERTY TO BE TAXED.
CHAPTER 2. LISTING PERSONAL PROPERTY.
CHAPTER 3. ASSESSING REAL ESTATE.
CHAPTER 4. BOARDS OF EQUALIZATION.
CHAPTER 5. LEVYING TAXES.
CHAPTER 6. COLLECTION OF TAXES.
CHAPTER 7. DELINQUENT LANDS.
CHAPTER 8. FORFEITED LANDS.

CHAPTER 1.

DEFINITIONS, AND PROPERTY TO BE TAXED.

SECTION
1. Definitions of particular terms used in this title.
2. Property subject to taxation, and when public lands become taxable.
3. Property exempt from taxation.
4. Certain leasehold lands to be assessed in the name of the lessee.

Definitions of particular terms.

Real property and land.

Investments in bonds.

SECTION 1. In this title, the terms "real property" and "land" shall be held to mean and include not only land itself, whether laid out in town lots or otherwise, with all things contained therein, but also, unless otherwise specified, all buildings, structures, and improvemnts, and fixtures of whatever kind thereon, and all rights and privileges belonging, or in anywise appertaining thereto; the terms "investments in bonds" shall be held to mean and include all moneys invested in bonds, or certificates of indebtedness, or other evidences of indebtedness, of whatever kind, whether issued by incorporated or unincorporated companies, towns, cities, villages, townships, counties, states, or other incorporations, or by the United States, held by persons residing in this state, whether for themselves or others; the terms "invest-

ments in stocks" shall be held to mean and include all moneys invested in the capital or stock of any association, corporation, joint stock company, or other company, the capital or stock of which is or may be divided into shares, which are transferable by each owner, without the consent of the other partners or stockholders, for the taxation of which no special provision is made by law, held by persons residing in this state, either for themselves or others; the terms "personal property" shall be held to mean and include, first, every tangible thing being the subject of ownership, whether animate or inanimate, other than money, and not forming part of any parcel of real property as hereinbefore defined; second, the capital stock, undivided profits, and all other means not forming part of the capital stock of every company, whether incorporated or unincorporated, and every share, portion, or interest in such stock, profits, or means, by whatsoever name the same may be designated, inclusive of every share or portion, right, or interest, either legal or equitable, in and to every ship, vessel, or boat, of whatsoever name or description, used or designed to be used either exclusively or partially in navigating any of the waters within or bordering on this state, whether such ship, vessel, or boat, shall be within the jurisdiction of this state or elsewhere, and whether the same shall have been enrolled, registered, or licensed at any collector's office, or within any collection district in this state or not; the term "money" or "moneys" shall be held to mean and include gold and silver coin, bank notes of solvent banks, in actual possession, and every deposit which the person owning, holding in trust or having the beneficial interest therein, is entitled to withdraw in money on demand; the term "credits" shall be held to mean the excess of the sum of all legal claims and demands, whether for money or other valuable thing, or for labor or service, due or to become due, to the person liable to pay taxes thereon, including deposits in banks or with persons in or out of this state, other than such as are held to be money as hereinbefore defined, when added together (estimating every such claim or demand at its true value in money) over and above the sum of legal bona fide debts, owing by such person; but in making up the sum of such debts owing, there shall be taken into account no obligation to any mutual insurance company, nor any unpaid subscription to the capital stock of any joint stock company, nor any subscription for any religious, scientific, literary, or charitable purpose; nor any acknowledgment of any indebtedness unless founded on some consideration actually received and believed at the time of making such acknowledgment to be a full consideration therefor; nor any acknowledgment made for the purpose of diminishing the amount of credits to be listed for taxation; nor any greater amount or portion of any liability as surety, than the person required to make the statement of such credits believes that such surety is in

Investments in stocks.

Personal property.

Money or moneys.

Credits.

equity bound, and will be compelled to pay, or to contribute, in case there be no securities: provided, that pensions receivable from the United States, shall not be held to be credits; and no person shall be required to take into account in making up the amount of credits a greater portion of any credits than he believes will be received or can be collected, or any greater portion of any obligation given to secure the payment of rent than the amount that shall have accrued on any lease and remain unpaid; words importing the masculine gender shall apply to females also, and the word "person" or "party," or other word importing the singular number, shall be held to include firms, companies, associations, and corporations; and all words in the plural number shall apply to single individuals, also in all cases in which the spirit and intent may require it. [56 v. 175, §§ 2, 3, 10; S. & C. 1438]

Masculine and feminine gender.

Singular and plural.

Property subject to taxation.

SEC. 2. All property whether real or personal in this state, and whether belonging to individuals or corporations; and all moneys, credits, investments in bonds, stocks, or otherwise, of persons residing in this state, shall be subject to taxation, except only such as may be expressly exempted therefrom; and such property, moneys, credits, and investments shall be entered on the list of taxable property as prescribed in this title; all tracts of land set apart for school or ministerial purposes, and sold by and under authority of law, and all lands which shall be hereafter sold by the United States, shall be subject to taxation as other lands in this state immediately after such sale; but school or ministerial lands shall not be sold for taxes until the purchase-money therefor shall be fully paid, but shall be returned as delinquent, and continue on the duplicate, with the taxes of each year charged thereon, and added to the tax and penalty due when the same became delinquent, until payment be made, by the purchaser or his assigns, of such purchase-money, with the tax and penalty, or the lands resold by the county auditor, pursuant to the laws now or hereafter in force for the sale of such lands. [56 v. 175, § 1; S. & C. 1438: 71 v. 96, § 78.]

When public lands become taxable.

Property exempt.

SEC. 3. The following property shall be exempt from taxation:

Schools and churches.

First—All public school-houses, and houses used exclusively for public worship, the books and furniture therein, and the grounds attached to such buildings necessary for the proper occupancy, use, and enjoyment of the same, and not leased or otherwise used with a view to profit; all public colleges, public academies, all buildings connected with the same, and all lands connected with public institutions of learning, not used with the view to profit: This provision shall not extend to leasehold estates of real property held under the authority of any college or university of learning of this state: provided, nevertheless, that all leaseholds or other estates or property whatsoever, real or personal, the

rents, issues, profits, and income of which have been or hereafter shall be given to any city, town, village, school district or sub-district, in this state, exclusively for the use, endowment or support of schools for the free education of youth without charge, are and shall be exempt from taxation so long as such property, or the rents, issues, profits, and income thereof shall be used and applied exclusively for the support of free education by such city, town, village, district, or sub-district.

Cemeteries.

Second — All lands used exclusively as graveyards or grounds for burying the dead, except such as are held by any person or persons, company or corporation, with a view to profit, or for the purpose of speculating in the sale thereof.

State and federal property.

Third—All property, whether real or personal, belonging exclusively to the state or the United States.

County buildings.

Fourth—All buildings belonging to counties, used for holding courts, for jails, or for county offices, with the ground, not exceeding, in any county, ten acres, on which such buildings are erected.

Poor-houses.

Fifth—All lands, houses, and other buildings belonging to any county, township, or town, used exclusively for the accommodation or support of the poor.

Public charities.

Sixth—All buildings belonging to institutions of purely public charity, together with the land actually occupied by such institutions, not leased or otherwise used with a view to profit, and all moneys and credits appropriated solely to sustaining and belonging exclusively to such institutions.

Property used for extinguishing fires.

Seventh—All fire engines and other implements used for the extinguishment of fires, with the buildings used exclusively for the safe-keeping thereof, and for the meeting of fire companies, whether belonging to any town or to any fire company organized therein.

Other public property.

Eighth—All market houses, public squares, or other public grounds, town or township houses or halls, used exclusively for public purposes, and all works, machinery, and fixtures belonging to any town, and used exclusively for conveying water to such town.

Fifty dollars of personal property.

Ninth—Each individual in this state may hold exempt from taxation personal property of any description of which said individual is the actual owner, not exceeding fifty dollars in value. [61 v. 39, § 3; S. & S. 761.]

Soldiers' monuments.

Tenth—All funds raised and set apart for the purpose of building monuments to the fallen soldiers of this state, and all monuments and monumental buildings, when erected, shall be forever exempt from taxation for any purpose whatever.

Certain lease-hold lands to be assessed in name of lessee.

SEC. 4. Lands held under a lease for a term exceeding fourteen years, belonging to the state, or to any religious, scientific, or benevolent society, or institution, whether incorporated or unincorporated, and school and ministerial lands, shall be considered, for all purposes of taxation, as the property of the persons so holding the same, and shall be assessed in their names. [56 v. 175, § 5; S. & C. 1438.]

CHAPTER 2.

LISTING PERSONAL PROPERTY.

SECTION
1. Who shall list personal property.
2. Where it shall be listed.
3. When to be listed and as of what day.
4. What the statement shall contain and in what order.
5. Persons claiming to have nothing to list shall make oath to that fact.
6. Rules for valuing personal property.
7. Who are merchants and their statements.
8. Transient traders and their returns.
9. Who are manufacturers and their returns.
10. Merchants and manufacturers commencing business after the day preceding second Monday of April, must make return.
11. Corporations generally: their returns.
12. Foreign insurance companies: returns by their agents.
13. In whose name property shall be listed; but stock in companies which make returns of capital not to be listed by shareholders.
14. When lists to be made: notice and forms to be given by assessor.
15. Statements to be verified by oath.
16. County auditor shall assemble and instruct assessors, and furnish them blanks.
17. When the assessor shall make the list.
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20. Assessor to assess real estate and new structures, and return structures destroyed.
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39. When and where to meet, and their duties.
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41. Action of the board.
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SECTION
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48. Action of auditor upon false return or evasion of return.
49. His correction of returns.
50. Penalties for refusal to obey process.
51. Party refusing to list or swear, to be so returned and fifty per centum added.
52. Filing away statements.

By whom personal property shall be listed.

SECTION 1. Every person of full age and sound mind shall list the personal property of which he is the owner, and all moneys in his possession, all moneys invested, loaned, or otherwise controlled by him, as agent or attorney, or on account of any other person or persons, company or corporation whatsoever, and all moneys deposited subject to his order, check, or draft, and all credits due from or owing by any person or persons, body corporate or politic, whether in or out of such county. The property of every ward shall be listed by his guardian; of every minor child, idiot, or lunatic, having no guardian, by his father, if living, if not, by his mother, if living, and if neither father nor mother be living, by the person having such property in charge; of every wife by her husband, if of sound mind, if not, by herself; of every person for whose benefit property is held in trust, by the trustee; of every estate of a deceased person, by his executor or administrator; of corporations whose assets are in the hands of receivers, by such receivers; of every company, firm, or corporation, by the president or principal accounting officer, partner, or agent thereof. [62 v. 105, § 4; S. & S. 756.]

Where personal property shall be listed.

SEC. 2. Every person required to list property on behalf of others shall list the same in the same township, city, or village in which he would be required to list it if such property were his own; but he shall list it separately from his own, specifying in each case the name of the person, estate, company, or corporation, to whom it belongs; all merchants' and manufacturers' stock, and all personal property upon farms shall be listed in the township, city, or village in which the same may be situated; and all other personal property, moneys, credits, and investments, except as otherwise specially provided, shall be listed in the township, city, or village in which the person to be charged with taxes thereon may reside at the time of the listing thereof, if such person reside within the county where the same are listed, and if not, then in the township, city, or village where the property is when listed. [62 v. 105, § 4; S. & S. 756.]

When property to be listed, and as of what day.

SEC. 3. Each person required to list property shall, annually, upon receiving a blank for that purpose from the assessor, or, within ten days thereafter, make out and deliver to the assessor, a statement, verified by his oath, of all the personal property, moneys, credits, investments in bonds, stocks, joint stock companies, annuities, or otherwise, in his possession or under his control, on the day preceding the second Monday of April of that year, which he is required to list for taxation, either as owner or holder thereof, or as parent, husband, guardian, trustee, executor, administrator, receiver, accounting officer, partner, agent, factor, or otherwise. [65 v. 38, § 6; S. & S. 758]

What the statement shall contain, and in what order.

SEC. 4. Such statement shall truly and distinctly set forth, first, the number of horses, and the value thereof; second, the number of neat cattle, and the value thereof; third, the number of mules and asses, and the value thereof; fourth, the number of sheep, and the value thereof; fifth, the number of hogs, and the value thereof; sixth, the number of pleasure carriages, (of whatever kind,) and the value thereof; seventh, the total value of all articles of personal property, not included in the preceding or succeeding classes; eighth, the number of watches, and the value thereof; ninth, the number of piano fortes and organs, and the value thereof; tenth, the average value of the goods and merchandise, which such person is required to list as a merchant; eleventh, the value of the property which such person is required to list as a banker, broker, or stock-jobber; twelfth, the average value of the materials and manufactured articles which such person is required to list as a manufacturer; thirteenth, moneys on hand or on deposit subject to order; fourteenth, the amount of credits as hereinbefore defined; fifteenth, the amount of all moneys invested in bonds, stocks, joint stock companies, annuities, or otherwise; sixteenth, the monthly average amount or value, for the time he held or controlled the same, within the preceding year, of all moneys, credits, or other effects, within that time invested in, or converted into bonds or other securities of the United States or of this state, not taxed, to the extent he may hold or control such bonds or securities on said day preceding the second Monday of April; and any indebtedness created in the purchase of such bonds or securities shall not be deducted from the credits under the fourteenth item of this section; but the person making such statement may exhibit to the assessor the property covered by the first nine items of this section, and allow the assessor to affix the value thereof, and in such case the oath of the person making the statement shall be in that regard only that he has fully exhibited the property covered by said nine items. [56 v. 175, § 7; S. & C. 1438: 65 v. 38, § 6; S. & S. 758.]

Persons claiming to have nothing to list must make oath to that fact.

SEC. 5. Any person who being called upon to list property for taxation, claims to have none, either on his own account or for others, subject to taxation, shall be required by

the assessor to make oath to the truth of his claim in that behalf. [56 v. 175, § 8; S. & C. 1438.]

Rules for valuing personal property.

SEC. 6. In listing personal property, it shall be valued at the usual selling price thereof, at the time of listing, and at the place where the same may then be; and if there be no usual selling price known to the person whose duty it is to fix a value thereon, then at such price as it is believed could be obtained therefor, in money, at such time and place; investments in bonds, stocks, joint stock companies, or otherwise, shall be valued at the true value thereof, in money; money, whether in possession or on deposit, shall be entered in the statement at the full amount thereof, except that depreciated circulating notes shall be entered at their current value; every credit for a sum certain, payable either in money, property of any kind, labor, or service, shall be valued at the full amount of the sum so payable, except that if it be for a specific article, or for a specified number or quantity of any article or articles of property, or for a certain amount of labor or services of any kind, it shall be valued at the current price of such property or of such labor or service, at the place where payable; and annuities, or moneys receivable at stated periods, shall be valued at the sum which the person listing the same believes them to be worth in money at the time of listing. [56 v. 175, § 9; S. & C. 1438.]

Statement of merchants.

SEC. 7. Every person who shall own or have in his possession, or subject to his control, any personal property within this state, with authority to sell the same, which shall have been purchased either in or out of this state, with a view to being sold at an advanced price or profit, or which shall have been consigned to him, from any place out of this state, for the purpose of being sold at any place within this state, shall be held to be a merchant; and, when he shall be by this chapter required to make out and deliver to the assessor a statement of his other personal property, he shall state the value of such property appertaining to his business as a merchant; and in estimating the value thereof, he shall take as the criterion the average value of all such articles of personal property which he shall have had from time to time in his possession, or under his control during the year next previous to the time of making such statement, if so long he shall have been engaged in business, and if not, then during such time as he shall have been so engaged; and the average shall be made up by taking the amount in value on hand, as nearly as may be, in each month of the next preceding year in which the person making such statement shall have been engaged in business, adding together such amounts, and dividing the aggregate amount thereof by the number of months that the person making the statement may have been in business during the preceding year: provided, that no consignee shall be required to list for taxation the value of any property, the product of this state, which shall have been consigned to

By consignee.

him, for sale or otherwise, from any place within the state, nor the value of any property consigned to him from any other place for the sole purpose of being stored or forwarded: provided, he shall, in either case, have no interest in such property, or any profit to be derived from its sale. [56 v. 175, § 11; S. & C. 1438.]

Transient traders: their returns.

SEC. 8. Whenever any transient person shall locate in any city, village, or township, and shall offer to sell or otherwise dispose of any books or other goods, wares, or merchandise, under the name of a gift book store, or any other name or designation, it shall be the duty of the proper assessor for the time being, of the place where such person shall locate, forthwith to call upon such person, and demand of him the true value in money of all his stock in trade; and in case such person shall neglect or refuse to return the same under oath, within twenty-four hours after such demand, then it shall be the duty of said assessor to determine the same as in other cases, and in either case he shall forthwith return said valuation to the auditor of the county. [58 v. 134, § 1; S. & S. 760.]

Manufacturers must list all articles used in manufacturing, refining, etc.

SEC. 9. Every person who shall purchase, receive, or hold personal property of any description, for the purpose of adding to the value thereof by any process of manufacturing, refining, rectifying, or by the combination of different materials, with a view of making a gain or profit by so doing, shall be held to be a manufacturer, and he shall, when he is required to make and deliver to the assessor a statement of the amount of his other personal property subject to taxation, also include in his statement the average value estimated, as provided herein with reference to merchants, of all articles purchased, received, or otherwise held for the purpose of being used, in whole or in part, in any process or operation of manufacturing, combining, rectifying, or refining, which, from time to time, he shall have had on hand during the year next previous to the time of making such statement, if so long he shall have been engaged in such manufacturing business, and if not, then during the time he shall have been so engaged. Every such manufacturer shall also list at their fair cash value all articles on hand at the time when by law he is required to make his list, which had been by him manufactured, or changed in any way, either by combination, or rectifying, or refining, or adding thereto, one year or more previous thereto, and also the value of all engines and machinery of every description used or designed to be used in any process of refining or manufacturing (except such fixtures as shall have been considered a part of any parcel or parcels of real property), including all tools and implements of every kind used or designed to be used for the aforesaid purpose, owned or used by such manufacturer. [61 v. 82, § 12; S. & S. 758.]

And all manufactured articles on hand, engines, tools, etc.

SEC. 10. When any person shall commence business as a merchant or manufacturer in any county after the day pre-

ceding the second Monday of April in any year, the average value of whose personal property employed in such business shall not have been previously entered on the assessor's list for taxation in said county, such person shall report to the auditor of the county the probable average value of the personal property by him intended to be employed in such business until the day preceding the second Monday of April thereafter. [56 v. 175, § 13; S & C. 1438.]

By merchants or manufacturers commencing business after the day preceding the second Monday of April.

Corporations generally: their returns.

SEC. 11. The president, secretary, and principal accounting officer of every canal or slackwater navigation company, turnpike company, plank-road company, bridge company, insurance company, telegraph company, or other joint stock company, except banking or other corporations whose taxation is specifically provided for, for whatever purpose they may have been created, whether incorporated by any law of this state or not, shall list for taxation, verified by the oath of the person so listing, all the personal property, which shall be held to include all such real estate as is necessary to the daily operations of the company, moneys and credits of such company or corporation within the state, at the actual value in money, in manner following: In all cases return shall be made to the several auditors of the respective counties where such property may be situated, together with a statement of the amount of said property which is situated in each township, village, city, or ward therein. The value of all movable property shall be added to the stationary and fixed property and real estate, and apportioned to such wards, cities, villages, or townships, pro rata, in proportion to the value of the real estate and fixed property in said ward, city, village, or township, and all property so listed shall be subject to and pay the same taxes as other property listed in such ward, city, village, or township. It shall be the duty of the accounting officer aforesaid to make return to the auditor of state during the month of May of each year of the aggregate amount of all property by him returned to the several auditors of the respective counties in which the same may be located. It shall be the duty of the auditor of each county, on or before the first Monday of May, annually, to furnish the aforesaid president, secretary, principal accounting officer, or agent, the necessary blanks for the purpose of making aforesaid returns; but no neglect or failure on the part of the county auditor to furnish such blanks shall excuse any such president, secretary, principal accountant, or agent, from making the returns within the time specified herein. If the county auditor to whom returns are made is of the opinion that false or incorrect valuations have been made, or that the property of the corporation or association has not been listed at its full value, or that it has not been listed in the location where it properly belongs, or in cases where no return has been made to the county auditor, he is hereby required to proceed to have the same valued and assessed: provided, that nothing in this section shall be so construed

as to tax any stock or interest in any joint stock company held by the state. [73 v. 139, § 16.]

Foreign insurance companies: returns by their agents.

SEC. 12. Every agency of an insurance company incorporated by the authority of any other state or government, shall return to the auditor of the county in which the office or agency of such company may be kept, in the month of May, annually, the amount of the gross receipts of such agency, which shall be entered upon the tax list of the proper county, and subject to the same rate of taxation for all purposes that other personal property is subject to at the place where located. [73 v. 139, § 16.]

In whose name property to be listed: but stock in companies which make return of capital not to be listed by shareholder.

SEC. 13. Personal property of every description, moneys and credits, investments in bonds, stocks, joint stock companies, or otherwise, shall be listed in the name of the person who was the owner thereof on the day preceding the second Monday of April, in each year; but no person shall be required to list for taxation any share or shares of the capital stock of any company, the capital stock of which is taxed in the name of such company. [56 v. 175, § 59; S. & C. 1438.]

When lists to be made.

SEC. 14. The listing of all personal property, moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, shall be made between the second Monday of April and the third Monday of May, annually; and the assessor shall, on or before the first Monday of May, annually, leave with each person, resident in his township or ward, of full age, and not a married woman, or insane person, or at the office, usual place of residence or business of each person, a written or printed notice, requiring such person to make out for the assessor a statement of the property which, by law, he is required to list, accompanied with printed forms, in blank, of the statement required; and the assessor shall, at the time he delivers such notice and blank forms, demand and receive such statement, unless such person shall require further time to make out the same, in which case he shall call for the same before the third Monday of May. [56 v. 175, § 17; S. & C. 1438.]

Notice and forms to be given by assessors.

Statements to be verified by oath.

SEC. 15. Every such statement shall be verified by the oath of the person making the same. [56 v. 175, § 17; S. & C. 1438.]

County auditor shall assemble and instruct assessors, and furnish them blanks.

SEC. 16. The county auditor shall, before the fifteenth of April, annually, issue a call to all the assessors of his county, to meet at his office, or some other place at the county seat, within five days, for consultation; and the auditor shall meet with said assessors, and answer such questions and give such instructions as shall tend to a uniformity in the action of the assessors in his county; and the auditor shall deliver to said assessors blank forms and instructions, or forward them to the township clerks, immediately after said meeting of assessors. [62 v. 114, § 56; S. & S. 755.]

SEC. 17. When any person shall refuse or neglect to make out or deliver the statement above required, or shall refuse

or neglect to take and subscribe the oath thereto, the assessor shall proceed to ascertain the number of each description of the several enumerated articles of personal property and the value thereof, and the value of the unenumerated articles, and the value of the moneys, credits, and investments of such person; and for this purpose the assessor may examine on oath any person or persons whom he may suppose to have a knowledge thereof. [56 v. 175, § 18; S. & C. 1438.]

When assessor shall make the list.

SEC. 18. When such failure to make or verify such statement is occasioned by the sickness or absence of the person who should make or verify the same, or by his neglect or refusal to make or verify the same, the assessor, if unable to obtain positive evidence of the items or value, may make the statement from general reputation and his own knowledge of facts and circumstances. [56 v. 175, § 19; S. & C. 1438.]

Upon what information the assessor shall act.

SEC. 19. When any person shall have been prevented from making or verifying a statement of property for taxation, by sickness or absence, and the assessor shall have made a statement for him, he may, at any time before the assessment of taxes thereon by the county auditor, make, verify, and file with the auditor the proper statement; but in such case before the auditor shall receive such statement the person making the same must add to the ordinary affidavit a statement to the effect that his failure to give to the assessor or verify such statement at the proper time was occasioned by his sickness or absence; and on the filing of such statement the auditor shall correct the statement made by the assessor. [56 v. 175, § 33; S. & C. 1438.]

When persons may make return after the assessor has made return for them.

SEC. 20. At the time of taking the lists of personal property, the assessor shall also take a list of all real property which shall have become subject to taxation and is not on the tax list, and affix a value thereto according to the rules prescribed for district assessors in assessing real estate; and he shall also make and return a list of all new buildings or other structures of any kind of over one hundred dollars in value, the value of which shall not have been previously added to or included in the valuation of the land on which such structures have been erected, specifying the tract or lot of land on which each of such structures has been erected, the kind of structure, and the value which, in his opinion, has been added to such tract or lot by the erection thereof; and in case of the destruction by fire, flood, or otherwise, of any structure of any kind over one hundred dollars in value, the value of which shall have been included in any former valuation of the tract or lot on which the same stood, the assessor shall determine, as near as practicable, how much less valuable such tract or lot is in consequence of such destruction, and make return thereof, and the auditor shall deduct the same from the value thereof as it stands on the tax list; and if said assessor shall ascertain that at the last decennial period, or annual return, a mistake in the value of any improvement or betterment of any real property has

Assessors to assess real estate and new structures not before assessed.

And return for deduction structures destroyed by fire, flood, or otherwise, that have been assessed.

occurred, or that the true value thereof has been omitted, then and in such case it shall be the duty of the assessor to return the correct value thereof, first giving notice of such action on his part to the owner or agent of his intention so to do, and such addition shall be a proper subject for the determination of the next annual board of equalization upon the petition of the owner or agent of such property being filed for that purpose, and all additions made by the assessor as contemplated by this section, as well as all such as may be made under the provisions of section forty-eight of this chapter, shall be placed upon the grand duplicate of the county and placed in the hands of the county treasurer for collection, subject to be modified by the action of the next annual board of equalization. [56 v. 175, § 22; S. & C. 1438.]

Dogs shall be listed.

SEC. 21. Every dog over three months of age, shall be listed, either by the owner or by the assessor in the name of the owner, without affixing any valuation thereto; but the owner may, if he so desire, affix any value thereto he wishes, without swearing to the valuation. Every person keeping or harboring a dog shall be deemed the owner thereof; and the assessor shall ascertain the owner of every dog within his territory, and for this purpose may examine under oath any person or persons he may think proper. [74 v. 177, §§ 1, 2.]

Returns to be made by the assessor.

SEC. 22. Each assessor shall, on or before the third Monday of May, annually, make out and deliver to the county auditor, in tabular form and alphabetical order, a list or lists of the names of the several persons, companies, or corporations, in whose names any personal property, moneys, credits, or investments shall have been listed, either by such persons, companies, or corporations, or by himself, placing separately, in appropriate columns, opposite each name, the aggregate value of the several species of property enumerated in the fourth section of this chapter as listed, and the number of dogs, and when the value is given by the owner, such valuation, making separate lists of persons residing out of any incorporated town, and of persons who are residents of any incorporated town, or who are residents of any special or separate school district; the columns shall be accurately added up, and in every case in which any person whose duty it is to list any property for taxation, shall have refused or neglected to list the same when called on for that purpose, or to take and subscribe the oath in regard thereto, when required, the assessor shall enter opposite the name of such person, in an appropriate column, the words "refused to list," or "refused to swear," and in every case in which any person required to list property shall have been absent, or unable from sickness to list or swear, the assessor shall enter opposite the name of such person, in the proper column, the word "absent," or "sick." [74 v. 99, § 20.]

SEC. 23. At the time of delivering the list named in the next preceding section, the assessor shall also deliver to the

auditor all the statements of property which he shall have received from persons required to list the same, and also those prepared by himself, all arranged in alphabetical order; and the auditor shall carefully preserve the same in his office for at least one year. [56 v. 175, § 21; S. & C. 1438.]

Assessor to return also the original statements properly arranged.

SEC. 24. The assessor, upon making return to the auditor of the lists and statements, shall take and subscribe an oath to the effect following, which may be administered by the auditor or any officer authorized to administer oaths:

Oath of assessor to returns.

I, ——— ———, assessor for ——— ———, in the county of ———, do solemnly swear that the value of all personal property, moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, of which a statement has been made to me by the person required by law to list the same, is truly returned, as set forth in such statement; that in every case where by law I have been required to ascertain the items and value of the personal property, moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, of any person, company, or corporation, I have diligently, and by the best means in my power, endeavored to ascertain the same; and that, as I verily believe, a full list, with the value thereof, estimated by the rules prescribed by law, is set forth in the annexed return; that in no case have I knowingly omitted to demand of any person, of whom by law I was required to make such demand, a statement of the description and value of personal property, or of the amount of moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, which he was required to list, or in any way connived at any violation or evasion of any of the requirements prescribed by law, in relation to the listing or valuation of property, moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, of any kind, for taxation; and that I have returned to the county auditor the original statements made to me, or which I have made, and also the statistics which by law I am required to procure and return. [56 v. 175, § 23; S. & C. 1438.]

UNINCORPORATED BANKS AND BANKERS.

Who deemed bankers.

SEC. 25. Every company, association, or person, not incorporated under any law of this State or of the United States, for banking purposes, who shall keep an office or other place of business, and engage in the business of lending money, receiving money on deposit, buying and selling bullion, bills of exchange, notes, bonds, stocks, or other evidences of indebtedness, with a view to profit, shall be deemed a bank, banker, or bankers, within the meaning of this chapter. [64 v. 204, § 12; S. & S. 763.]

Statement by unincorporated banks or bankers.

SEC. 26. All unincorporated banks and bankers shall, annually, between the first and second Mondays of May, make out and return to the auditor of the proper county, under

oath of the owner, or principal officer or manager thereof, a statement setting forth—

1st. The average amount of notes and bills receivable, discounted or purchased in the course of business, by such unincorporated bank, banker, or bankers, and considered good and collectible.

2d. The average amount of accounts receivable.

3d. The average amount of cash and cash items in possession or in transit.

4th. The average amount of all kinds of stocks, bonds, or evidences of indebtedness, held as an investment, or in any way representing assets.

5th. The average amount of real estate at its assessed value.

6th. The average amount of all deposits.

7th. The average amount of accounts payable, exclusive of current deposit accounts.

8th. The amount of capital paid in or employed in such banking business, together with the number of shares or proportional interest each shareholder or partner has in such association or partnership.

Deduction by auditor.

From the aggregate sum of the first five items above enumerated, the said auditor shall deduct the aggregate sum of the fifth, sixth, and seventh items, and the remainder thus obtained shall be entered on the duplicate of the county in the name of such bank, banker, or bankers, and shall be subject to taxation the same as is provided for other personal property assessed and taxed in the same city, ward, or township. [64 v. 204, § 10; S. & S. 763.]

How averages obtained.

SEC. 27. The averages provided for in the preceding section shall be obtained by adding together the amounts of each item above specified, owned by or standing on the books of such bank, banker, or bankers, on the first Monday of each month of the year preceding the Monday of May in which the return is made, and dividing the same by the number of months in the year: provided, that in cases where such bank, banker, or bankers commenced business during the preceding year, the division shall be made by the number of months elapsed after the commencement of such business. [64 v. 204, § 11; S. & S. 763.]

Persons commencing the business of banking after the day preceding the second Monday of April; how to be listed.

SEC. 28. When any person, persons, company, or association unincorporated, shall commence or engage in the business of banking, after the day preceding the second Monday in April, in any year, the average value of whose personal property intended to be employed in such business shall not have been previously entered on the assessor's list for taxation, in said county, such person, persons, company, or association shall report to the auditor of the county the probable average value of the personal property by him or them intended to be employed in such business until the day preceding the second Monday in April thereafter, and shall pay into the treasury of such county a sum which shall bear the

same proportion to the levy for all purposes, on the average value so employed, as the time from the day on which he or they shall commence or engage in such business as aforesaid, to the day preceding the second Monday in April next succeeding, shall bear to one year. [56 v. 175, § 14; S. & C. 1438.]

INCORPORATED BANKS.

Shares to be listed.

SEC. 29. All the shares of the stockholders in any incorporated bank or banking association, located in this state, whether now or hereafter incorporated or organized under the laws of this state or of the United States, shall be listed at their true value in money, and taxed in the city, ward, or village where such bank is located, and not elsewhere. [64 v. 204, § 1; S. & S. 763.]

Tax on real estate.

SEC. 30. The real estate of any such bank or banking association shall be taxed in the place where the same may be located, the same as the real estate of individuals. [64 v. 204, § 2; S. & S. 763.]

Names of stockholders and number of shares held by each.

SEC. 31. There shall at all times be kept in the office where the business of such bank or banking association is transacted, a full and correct list of the names and residences of the stockholders therein, and the number of shares held by each, which shall be at all times during business hours open to the inspection of all officers who are or may be authorized to list or assess the value of such shares for taxation. [64 v. 204, § 3; S. & S. 763.]

Return to be made by cashier to the auditor.

SEC. 32. The cashier of each incorporated bank shall make out and return to the auditor of the county in which it is located, between the first and the second Monday of May, annually, a report in duplicate, under oath, exhibiting, in detail, and under appropriate heads, the resources and liabilities of such bank, at the close of business on the Wednesday next preceding said [second] Monday, together with a full statement of the names and residences of the stockholders therein, with the number of shares held by each, and the par value of each share. [74 v. 88, § 1.]

Auditor to assess the value of shares and submit the same, with the bank return, to the county board of equalization.

SEC. 33. Upon receiving such report the auditor shall fix the total value of the shares of such bank according to their true value in money, and deduct from the aggregate sum so found the value of the real estate included in said statement of resources as the same stands on the duplicate; and thereupon he shall make out and transmit to the annual county board of equalization a copy of the report so made by the cashier, together with the valuation of such shares as so fixed by the auditor. [64 v. 204, § 5; S. & S. 763: 74 v. 88, § 2.]

The board's action thereon.

SEC. 34. The county board of equalization, upon receiving the statements named in the next preceding section, shall have power to hear complaints and equalize the shares of the several banks in said county according to their true value in money as fixed by the auditor. [74 v. 88, § 3.]

such questions as may be put to him by said board or its order, touching the business, property, moneys, and credits, and the value thereof, of said railroad company, shall be guilty of a misdemeanor, and, on conviction thereof, before any court of competent jurisdiction, shall be confined in the jail of the county not exceeding thirty days, and be fined in any sum not exceeding five hundred dollars and costs; and any president, secretary, receiver, accounting officer, servant, or agent, as aforesaid, so refusing, as aforesaid, shall be deemed guilty of contempt of such board, and may be confined by order of said board in the jail of the proper county until he shall comply with such order, and pay the costs of his imprisonment. [59 v. 88, § 4; S. & S. 768.]

Contempt of board; punishment.

Board of appraisers to apportion valuation among proper counties, and how.

SEC. 41. The value of such property, moneys, and credits, of any railroad company, as found and determined by such board, shall be apportioned by said board among the several counties through which such road, or any part thereof, runs, so that to each county, and to each city, village, township, and district, or part thereof therein, shall be apportioned such part thereof as shall equalize the relative value of the real estate, structures, and stationary personal property of such company therein, in proportion to the whole value of the real estate, structures, and stationary personal property of such railroad company in this state; and so that the rolling stock of such company shall be apportioned in the same proportion that the length of such road in said county bears to the entire length thereof in all said counties or county, and to each city, village, and district, or any part thereof therein; and the board shall certify to the county auditor of each county, and to each city, incorporated village, township, and district, or any part thereof therein interested, the amount apportioned to his county; and the board shall make and forward a like certificate, together with all the reports of the various railroad officers, and other papers and evidence which formed the basis of their valuation, to the auditor of state for the use of the state board of equalization of railroad property. It shall be the duty of the county auditor, upon receiving the certificate aforesaid, to apportion the amount therein stated to the cities, villages, townships, districts, or parts thereof; but the auditor shall not put the same on the tax-list until he shall have been advised of the action of said state authority, when the proper amounts shall be entered on the tax-lists. [59 v. 88, § 5; S. & S. 766: 64 v. 58, § 1; S. & S. 768.]

Compensation of members of the board.

SEC. 42. Each county auditor shall be paid from the treasury of his county the sum of three dollars for each day's attendance as a member of any board aforesaid under this chapter, and five cents a mile going to and returning from its place of meeting. [59 v. 88, § 7; S. & S. 766.]

SEC. 43. When any railroad company has part of its road in this state and part thereof in any other state or states, the proper board shall take the value of such property,

quorum, and a majority of those present at any meeting having a quorum shall decide all questions submitted. Each board shall appoint one of its number secretary, and full minutes of its proceedings shall be kept. [59 v. 88, § 2; S. & S. 766.]

Quorum.

Secretary.

SEC. 39. It shall be the duty of each board to meet in the month of May, in the present and each succeeding year, at such time as the president thereof may appoint; and if no meeting be appointed by him before the second Tuesday in May, the several county auditors shall meet on that day, in the place where the proper railroad for which said auditors constitute the board, as aforesaid, has its principal office, or in the principal city or village upon the line of such road, as the case may be, and proceed to ascertain all the personal property, which shall be held to include road bed, water and wood stations, and such other realty as is necessary to the daily running operations of the road, moneys, and credits of such company, and the undivided profits, reserved or contingent fund of said company, whether the same may be in moneys, credits, or in any manner invested, and the actual value thereof in money; and also locomotives and cars not belonging to the company, but hired for its use or run under its control on its road by a sleeping car company or other company; but as to such rolling stock not belonging to it but under its control, the railroad company may return the same separate from its own property, and if so returned, the board shall fix the valuation of such property separated, but include the amount in the aggregate valuation. Such boards shall have power to require from the president, secretary, treasurer, receiver, and principal accounting officer of such road, a detailed statement, under oath, of all the items and particulars constituting such property, moneys, and credits, and the value thereof, and may examine the books and papers of such road, and any or all of its officers, receivers, servants, or agents, under oath, touching any matter relating to the same. Any county auditor present at such meeting is authorized and empowered to administer such oath. It shall be the duty of said board of appraisers and assessors to report annually, on or before the first Monday in the month of June, to the auditor of state, the amount assessed upon each railroad company, specifying the total sum, and amount distributed to each county; which shall be by the auditor of state communicated to the general assembly, with his annual report, in tabular form. [64 v. 114, § 3; S. & S. 768.]

Board of valuation of railroad to meet annually, in May.

Duties of the board.

SEC. 40. Any president, secretary, receiver, accounting officer, servant, or agent, of any railroad company having any portion of its road-way in this state, who shall refuse to attend before the proper board of appraisers and assessors when required so to do, or refuse to submit to the inspection of said board any books or papers of such railroad company in his possession, custody, or control, or shall refuse to answer

Penalty for officers, etc., refusing to comply with requirements of board.

such questions as may be put to him by said board or its order, touching the business, property, moneys, and credits, and the value thereof, of said railroad company, shall be guilty of a misdemeanor, and, on conviction thereof, before any court of competent jurisdiction, shall be confined in the jail of the county not exceeding thirty days, and be fined in any sum not exceeding five hundred dollars and costs; and any president, secretary, receiver, accounting officer, servant, or agent, as aforesaid, so refusing, as aforesaid, shall be deemed guilty of contempt of such board, and may be confined by order of said board in the jail of the proper county until he shall comply with such order, and pay the costs of his imprisonment. [59 v. 88, § 4; S. & S. 768.]

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SEC. 43. When any railroad company has part of its road in this state and part thereof in any other state or states, the proper board shall take the value of such property,

moneys, and credits of such company so found and determined, as aforesaid, and divide it in the proportion the length of such road in this state bears to the whole length of such road, and determine the principal sum for the value of such road in this state accordingly, equalizing the relative value thereof in this state, as above provided. [59 v. 88, § 8; S. & S. 766]

How portion of value for this state found when part of road in another.

EXPRESS AND TELEGRAPH COMPANIES.

SEC. 44. Any person or persons, joint stock association, or corporation, conveying to, from, or through this state, or any part thereof, money, packages, gold, silver, plate, or other article, by express, not including the ordinary lines of transportation of merchandise and property, in this state, shall be deemed to be an express company; and any person or persons, joint stock association or corporation, engaged in transmitting to, from, through, or in this state, telegraphic messages, shall be deemed and held to be a telegraph company. [59 v. 91, § 5; S. & S. 769.]

Who deemed express or telegraph company.

SEC. 45. Each agent of any express company, or telegraph company, having its principal office in any other state or country, and doing business in this state, shall, annually, in the month of May, make and deliver to the auditor of the proper county in which such agent has his place of business, a statement, verified by the oath of such agent, showing the entire receipts of such agent for the year then next preceding for and on account of such company, including its proportion of gross receipts for business done by such company in connection with lines of other companies outside of the limits of this state: provided, that the amount which any express company actually pays to the railroads within this state, for the transportation of their freight within this state, may be deducted from the gross receipts of such company as above ascertained, and the balance thus found as to the express companies, and the gross receipts as above ascertained for the telegraph companies, shall be by said auditor entered upon the duplicate of his county against said company: provided, further, that nothing herein shall release such company from the provisions of section eleven of this chapter; and provided further, if such company have a principal agent in this state, superintending its other agents within this state, and to whom its other agents account for all the receipts and expenses of their respective agencies, then such principal agent may make the returns in their respective counties herein required, in accordance with the provisions of this chapter, of all the agencies within the state; such agent or agents, in making statement of such receipts, shall include as such all sums earned or charged of the business for such preceding year, whether actually received or not. [62 v. 174, § 1; S. & S. 771.]

Returns by foreign express and telegraph companies of receipts.

This not to release from return of property.

General agent may make returns.

SEC. 46. If any agent of such express or telegraph com-

Proceedings in probate court when agent refuses to make statement.

pany shall neglect or refuse to make and return such statement, it is hereby made the duty of the auditor of the county in which such agent has his office or place of business, to ascertain the amount so received by such agent, and for that purpose he is hereby authorized to institute proceedings in the probate court of the proper county, in the name of the state, against said agent, to compel the appearance of such agent before said court, to answer such questions as may be put to him relating to his said agency and the subject matter thereof. It shall be the duty of said probate judge, on complaint of any county auditor that any such agent has refused or neglected to make the statement required by the next preceding section, to compel the attendance of said agent before him by the process of the court, and then and there to require him to answer, under oath, all questions that may be put to him relating to his said agency, which examination shall be reduced to writing by said judge, and the costs of such proceedings shall be taxed against said agent personally, and collected as in case of judgments of said courts. From the examination aforesaid, and such other information as the auditor can obtain, he shall ascertain the receipts of said agent, and enter the sum upon his tax-list and duplicate, with fifty per cent. penalty thereon. [59 v. 91, §§ 2, 3; S. & S. 769.]

Sum and penalty to be entered on tax-list and duplicate.

Abstract made by express or telegraph company to be forwarded to the auditor of state.

SEC. 47. In all cases when the return for taxation is made to the several county auditors by the principal agent of any express or telegraph company, under the provisions of this chapter, it shall be the duty of said principal agent at the same time to forward an abstract thereof to the auditor of state, which said abstract shall contain the amount returned to each county, and the total amount returned to all of said counties. When no return is made to the several county auditors by the principal agent of any express or telegraph company, it shall be the duty of the several county auditors, annually, on or before the first day of August, to report to the auditor of state the amount returned to him by the several agents of any such company in his county, and the amount placed by such county auditor upon his tax-list and duplicate against such company, which returns shall be by the auditor of state reported to the general assembly with his annual report. [60 v. 11, § 1; S. & S. 771.]

Duty of county auditors if return not made.

CORRECTIONS OF RETURNS.

Action of auditor upon false return, or evasion of return.

SEC. 48. If any person whose duty it is to list property or make a return thereof for taxation, either to the assessor or to the county auditor, shall make a false return or statement, or shall evade making a return or statement, the county auditor shall ascertain, as near as practicable, the true amount of personal property, moneys, credits, and investments, that such person ought to have returned or listed, to which amount he shall add fifty per centum, and place

the same on the tax-list; and the inquiry and corrections provided for in this and the next section may go as far back as the same can be traced, not exceeding the four years next prior to the year in which the inquiries and corrections are made, but as to former years, no penalty shall be added, and only simple taxes shall be claimed. [58 v. 47, § 1; S. & S. 759.]

In case of false statement of personal property, duty of auditor.

SEC. 49. The county auditor, if he shall have reason to believe, or be informed that any person has given to the assessor a false statement of the personal property, moneys or credits, investments in bonds, stocks, joint stock companies, or otherwise, or that the assessor has not returned the full amount required to be listed in his ward or township, or has omitted or made an erroneous return of any property, moneys or credits, investments in bonds, stocks, joint stock companies, or otherwise, which are by law subject to taxation, shall proceed, at any time before the final settlement with the county treasurer to correct the return of the assessor, and to charge such persons on the duplicate with the proper amount of taxes; to enable him to do which, he is hereby authorized and empowered to issue compulsory process, and require the attendance of any person or persons whom he may suppose to have a knowledge of the articles, or value of the personal property, moneys or credits, investments in bonds, stocks, joint stock companies, or otherwise, and examine such person or persons, on oath, in relation to such statement or return; and it shall be the duty of the auditor, in all such cases, to notify every such person, before making the entry on the tax-list and duplicate, that he may have an opportunity of showing that his statement or return of the assessor was correct; and the county auditor shall, in all such cases, file in his office a statement of the facts or evidence upon which he made such correction; but he shall, in no case, reduce the amount returned by the assessor, without the written assent of the auditor of state, given on a statement of facts submitted by the county auditor. In all cases in which any person shall make a false statement of the amount of property for taxation, to evade the payment of taxes, in whole or in part, the person making such false statement shall be liable for, and pay all costs and expenses that may be incurred under the provisions of this section, and the same fees and costs shall be allowed and paid as are now or may be allowed by law, for similar services, and if not paid, may be collected before any justice of the peace of the proper county, by suit in the name of the county commissioners, but in all cases under this section, where the statement shall be found correct, and no intention to evade the payment of taxes, the costs and expenses incurred under this section shall be paid out of the county treasury of the proper county, on the order of the county auditor. [56 v. 175, § 34; S. & C. 1438.]

Costs and expenses under this section—who to pay them.

SEC. 50. Where any person summoned to appear before

Penalties.

the county auditor and give testimony, under the provisions of the next preceding section, or in proceedings against companies or corporations required to make return to the county auditor for taxation, shall neglect or refuse to appear, or shall neglect or refuse to answer any question that may be put to him by the auditor touching the matter under examination, the auditor shall apply to the probate judge of the county to issue a subpœna for the appearance of such person before him; and on the application of the county auditor, it shall be the duty of the probate judge to issue a subpœna for the appearance of such person forthwith before him to give testimony; and if any person so summoned shall fail to appear, or appearing, shall refuse to testify, he shall be subject to like proceedings and penalties for contempt as witnesses in actions pending in the probate court. [58 v. 47, § 2; S. & S. 759: 64 v. 204, § 13; S. & S. 763.]

Assessor to return the fact when parties refuse to list or swear.

SEC. 51. The assessor shall in every case in which any person, company, or corporation refuses or neglects to make return, or, on being requested so to do, refuses or neglects to swear to the same, shall return the fact of such refusal or neglect by the words "refused to list," or "refused to swear," as the case may be; and in every such case, and in every case in which any company or corporation whose duty it is to make return of taxable property to the auditor refuses or neglects to make or verify such return, the auditor shall add to the amount returned or ascertained fifty per centum of such amount, and the amount thus increased shall be the basis of taxation. [56 v. 175, § 32; S. & C. 1438.]

Auditor to add fifty per cent. on amount returned or ascertained when parties refuse to list or swear.

Filing away tax statements—how done.

SEC. 52. It shall be the duty of the county auditor, in filing away the statements of the taxable property of the individual tax-payers, as returned by the township assessor, in pursuance of law, to file the statements aforesaid returned from the different townships in separate bundles, each township by itself, instead of filing each statement separately.

Auditor's fees therefor.

The county auditor shall be allowed and paid out of the county treasury, the sum of twenty-five cents, and no more, for filing away the statements of taxable property, in each township in his county. [56 v. 128, § 46; S. & C. 95.]

CHAPTER 3.

ASSESSING REAL ESTATE.

SECTION
1. Decennial division of counties into assessors' districts and election of assessors.
2. Bond and oath of assessors.
3. Vacancies, how filled.
4. Lists, maps, and books to be furnished by auditor.
5. Duties of district assessors.
6. Surveys to be made when needed for description.
7. Tracts to be valued separately, and rules therefor.
8. Examination of buildings.
9. District, township, and ward assessors may appoint assistants.

SECTION
10. Compensation of district assessors.
11. Penalty for misconduct, of district, township, or ward assessor.
12. New town plats to be presented to auditor, and lots placed on duplicate.
13. District assessors to make return of their assessments.
14. Their return of exempted property.
15. Corrections by auditor.
16. Change of tax list as to new or destroyed structures.
17. If auditor discover omission, he shall correct the same, and how.
18. Lands omitted from duplicate to be put on, and charged with taxes for the time omitted.

Division of county into assessors' districts.

SECTION 1. The county commissioners of each county shall, at their June session, in the year one thousand eight hundred and seventy-nine, and every tenth year thereafter, divide their county into suitable and convenient districts, not more than the number of townships in their county; and any county within the limits of which there is a city, the commissioners shall divide said city into districts, comprising within each not less than one ward nor more than five, and no township or ward shall be divided in making such districts, which districts shall be composed of contiguous territory; and the commissioners shall give notice by publication in some newspaper in the county, and if no newspaper is published in the county, then by public notice set up in each township and ward, at the usual place of holding elections, setting forth the boundaries of the districts; and the qualified electors of such districts shall, at the October election, in the year eighteen hundred and seventy-nine, and every tenth year thereafter, elect some citizen of such district, having the qualifications of an elector, as assessor of real property within such district; the judges of election shall keep a separate poll-book for the election of said assessors; and the returns thereof, duly certified as in other cases, shall be made to the county auditor, who, with the clerk of the court of common pleas and probate judge of the county, shall open the same and declare the result; and the auditor shall within ten days after opening such returns, give notice to each of the persons elected of his election. And whenever the commissioners have failed to district their county at their June session, in accordance with the provisions of this section, it shall be their duty to district said county at any subsequent meeting of the board prior to the first Monday of April ensuing, and in such case the election shall be held on said first Monday of April. [65 v. 166, § 24; S. & S. 751.]

Election of district assessors.

Returns to county auditors.

Bond and oath of assessors.

SEC. 2. Each person so elected shall, within ten days after receiving such notice, file with the auditor his bond, payable to the state, with at least one good freeholder surety, to the acceptance of the auditor, in the sum of two thousand dollars, conditioned that he will diligently, faithfully, and impartially perform, all and singular, the duties enjoined on him by law, and he shall, moreover, take and subscribe

on said bond an oath of office; and if any person so elected shall fail to give bond, or shall fail to take an oath, as is required in this section, within the time therein prescribed, the office to which he was elected shall be considered vacant. [56 v. 175, § 25; S. & C. 1438.]

Vacancies.

SEC. 3. If there shall be a vacancy for the cause aforesaid, or from any other cause, or if there shall be a failure to elect in any district of any county, such vacancy or office shall be forthwith filled by the auditor, treasurer, and recorder of the county, or any two of them, by the appointment of any competent and suitable citizen of their county who will accept and perform the duties of such office, who shall give bond and take an oath of office as is required in the foregoing section. [56 v. 175, § 26; S. & C. 1438.]

When county auditor to furnish lists and maps to assessors.

SEC. 4. The auditor of each county shall, as soon as practicable, after the first day of March, one thousand eight hundred and eighty, and every tenth year thereafter, make out and deliver to the assessor of each district in his county an abstract from the books in his office, containing a description of each tract and lot of real property situate within such district, with the n me of the owner thereof, if known, and the number of acres or quantity of land contained therein, as the same shall appear on his books; and also a map of each township and town within such district, with such plat-books as may be necessary to enable the district assessor to make a correct plat of each section, survey, and tract in his district. It shall be the duty of the county commissioners, on or before their March session in the year one thousand eight hundred and seventy-nine, and every tenth year thereafter, to advertise for four consecutive weeks in one or more newspapers of general circulation in the county, for sealed proposals to construct the necessary maps and plats to enable the several district assessors in the county to correctly re-appraise all real estate; and such advertisement shall particularly specify the extent and character of the work to be done. Each bid shall be accompanied by a good and sufficient bond of not less than one thousand dollars in amount, to become due and payable in case the aforesaid bidder shall fail or refuse to enter into contract in accordance with the advertised proposals, in case the same shall be accepted. The county commissioners shall open the bids on the day named in the advertisement, and shall, within three days thereafter, (provided that the county commissioners may reject any and all bids for such work,) award the contract to the lowest and best bidder, who shall immediately give a good and sufficient bond, with two or more sureties, in an amount of not less than two thousand dollars, or more than ten thousand dollars, as shall be required by the aforesaid commissioners, conditioned on the prompt, faithful, and accurate performance of the work required to be done; but nothing in the foregoing shall be construed to prevent the auditor of the county from exercising full

supervision over the work of making said plats and maps. On the completion of any town, township, or district, the work shall be paid for out of the county treasury, on the warrant of the county auditor, after the same shall have been duly accepted and approved by the board of county commissioners; and no bill shall be allowed until the auditor and commissioners are satisfied that the labor has been performed in accordance with the contract on file with the county auditor. [65 v. 166, § 31; S. & S. 751.]

Duties of district assessor —his description and valuation of real estate.

SEC. 5. It shall be the duty of each district assessor to make out from the maps and descriptions furnished him by the county auditor, and from such other sources of information as shall be in his power, a correct and pertinent description of each tract and lot of real property in his district; and when he shall deem it necessary to obtain an accurate description of any separate tract or lot in his district, he may require the owner or occupier thereof to furnish the same, with any title papers he may have in his possession; and if such owner or occupier, upon demand made for the same, shall neglect or refuse to furnish a satisfactory description of such parcel of real property to such assessor, he may employ a competent surveyor to make out a description of the boundaries and location thereof, and a statement of the quantity of land therein, and the expense of such survey shall be returned by such assessor to the auditor of his county, who shall add the same to the tax assessed upon such real property; and it shall be collected by the treasurer of the county with such tax, and when collected, shall be paid on demand to the person to whom the same is due; and he shall, in all cases, from actual view, and from the best sources of information within his reach, determine as near as practicable the true value of each separate tract and lot of real property in his district, according to the rules prescribed by this chapter for valuing real property; and he shall note in his plat-book, separately, the value of all houses, mills, and other buildings, which exceed one hundred dollars in value, on any tract of land other than town lots, which shall be carried out as a part of the value of such tract; he shall also enter on his plat-book the number of acres of arable or plow land, the number of acres of meadow and pasture land, and the number of acres of wood and uncultivated land in each tract, as near as may be. [56 v. 175, § 27; S. & C. 1438.]

Re-survey, etc.

Assessors to have certain sections platted, etc., and plat recorded.

SEC. 6. Whenever any original survey, section, tract, or lot shall have become divided into such small parcels or fractions, as to render the description of the several parts thereof indefinite and doubtful, the assessors of real property in their several districts, may, and they are hereby required, when appraising any such survey and section, tract, or lot, or part thereof, so subdivided as aforesaid, to cause the said section, or such parts thereof as may be necessary, to be accurately platted and laid out into such subdivisions as the

different titles to the land in the same may require, and to number the said fractions or subdivisions as fractions or subdivisions of said section, tract, or lot or part thereof, or such parts thereof as may be subdivided, and shall deliver the said plat so numbered to the recorder of the county, who shall accurately record the same, and from and after such record shall have been made, the numbers so given to said subdivisions or fractions shall be deemed in law a sufficient description of the land so platted, numbered and recorded, for all purposes of taxation and conveyancing. When the assessor shall have neglected to plat and number such divisions, or the survey, section, tract, lot, or part thereof, has been or hereafter may be subdivided after the assessment and appraisal thereof, and in the opinion of the auditor of the county the same is required to be platted and numbered for the purpose of a pertinent description thereof upon his duplicate, the county auditor may require the owner or owners, occupier or occupiers, of such section, tract, lot, or part thereof, to produce to him at his office the title papers and surveys of the several subdivisions thereof, as well as of the survey, section, tract, lot, or part thereof, subdivided, on a day certain, not longer than thirty, nor less than ten days from the date of such notice. If the owner or owners, occupier or occupiers, of any survey, section, tract, lot, or part thereof, so subdivided, fail to appear when so required, and produce the title papers, or so producing them, the auditor can not, without a survey, plat, and number said subdivisions, he may require such owner or owners, occupier or occupiers, to cause the same to be surveyed, platted and numbered within twenty days, and said survey and plat delivered to the recorder of said county for record. If such survey and plat is not made and delivered to the recorder within the time required, or the owner or owners, occupier or occupiers, or any of them, have not appeared when so required, the auditor may cause the subdivision or subdivisions of such survey, section, tract, lot or part thereof to be surveyed, platted, and numbered by the county surveyor and recorded by the county recorder. The expense of the survey and record so made by the order of the county auditor shall be reported to him by the surveyor and recorder, and by said auditor added to the tax on such subdivisions in proportion to the quantity of land in each, which shall be collected as the other taxes against the same, and when collected paid over to the parties entitled thereto on the warrant of the auditor. When the title papers are produced to the auditor, he is authorized, if practicable, to plat, allot, and number said subdivisions. The plat so made by the auditor shall be recorded upon the records of deeds of the county. After the same has been so platted and numbered by the auditor, or by the surveyor, it shall be held sufficient for all purposes of taxation to enter such subdivisions upon the duplicate by the numbers thereof, as is now provided by law for separate par-

After record number to be sufficient description.

Owner of land to produce to county auditor survey, etc., in certain cases.

County auditor may require owner to make survey, etc.

If owner fail to make survey, county auditor may have it done, and add expense to tax.

Plat to be recorded, etc.

cels of land, and the same shall be held a pertinent and sufficient description thereof. [62 v. 14, § 1; S. & S. 20.]

Tracts to be valued separately, and sales therefor.

SEC. 7. Each separate parcel of real property shall be valued at its true value in money, excluding the value of the crops growing thereon; but the price for which such real property would sell at auction, or at forced sale, shall not be taken as the criterion of the true value; and where the fee of the soil of any tract, parcel or lot of land is in any person or persons, natural or artificial, and the right to any minerals therein in another or others, the same shall be valued and listed agreeably to such ownership in separate entries, specifying the interest listed, and shall be taxed to the parties owning the different interests, respectively. [56 v. 175, § 9; S. & C. 1438.]

His examination of buildings.

SEC. 8. For the purpose of enabling the assessor to determine the value of buildings and other improvements, he is hereby required to enter, with the consent of the owner or occupant thereof, and fully to examine all buildings and structures of whatever kind, which are by this title either liable to or exempt from taxation. [56 v. 175, § 28; S. & C. 1438.]

Assessors may appoint assistants.

SEC. 9. Any district, township or ward assessor, who shall deem it necessary, to enable him to complete, within the time prescribed, the listing and valuation of the property, moneys and credits, of his district, township or ward, may, with the approbation of the county auditor, appoint some well qualified citizen of his county or township to act as an assistant, and assign to him such portion of his district, township or ward, as he shall think proper; and each assistant so appointed, shall, within the division of such district, township or ward assigned him, under the direction of the assessor, after giving bond and taking an oath, as prescribed by law, perform all the duties enjoined upon, vested in, or imposed upon assessors by the provisions of law. [56 v. 175, § 49; S. & C. 1438.]

Compensation of district assessors.

SEC. 10. Each district assessor or assistant shall be entitled to receive for each day necessarily employed in the performance of his duties the sum of two dollars, to be paid out of the county treasury after the same has been allowed by the county commissioners. [56 v. 175, § 50; S. & C. 1438.]

Penalty for misconduct of district, township, or ward assessor.

SEC. 11. Every district, township, or ward assessor or assistant who shall in any case refuse or knowingly neglect to perform any duty enjoined on him by law, or who shall consent to or connive at any evasion of the provisions of this chapter, whereby any property required to be assessed shall be unlawfully exempted, or the valuation thereof entered at less than its true value, shall for every such neglect, refusal, consent, or connivance, forfeit and pay to the state not less than two hundred dollars nor more than one thousand dollars, to be recovered by action. [56 v. 175, § 52; S. & C. 1438.]

SEC. 12. Whenever any person or persons shall lay out any town or any addition to any town, he or they shall, be-

Plats of new towns or addition to be presented to auditor for assessment.

fore the plat thereof is recorded, present the same to the county auditor, who shall cause the assessor of the proper locality to assess and return the true valuation of each lot or parcel of land described in such plat, in the same manner as new structures are valued; and thereupon such lots or parcels shall be entered on the tax list in lieu of the land included therein; but in making such valuation, regard shall be had to the next preceding decennial valuation of real estate, so that the said lots shall, as near as practicable, be equalized with adjacent lands and lots according to such decennial valuation. [63 v. 174; S. & S. 762.]

Assessors; return to county auditor; valuation of real estate, and how.

SEC. 13. Each district assessor shall, on or before the first Monday of July, one thousand eight hundred and eighty, and every tenth year thereafter, make out and deliver to the auditor of his county a return, in tabular form, contained in a book to be furnished him by such auditor, of the amount, description, and value of the real property subject to be listed for taxation in his district, which return shall contain: First, the names of the several persons, companies, or corporations, in whose names the several tracts of real property other than town property in each township within his district shall have been listed, and in appropriate columns, opposite each name, the description of each tract, designating the number of acres, the number of section, and the part thereof, and of the township or survey, listed in such name, and the value of each separate tract, as determined by the assessor; second, the names of the several persons, companies, or corporations in whose names the several lots of real property in each town in his district shall have been listed, and in the appropriate columns, opposite each name, the description of each lot and the value thereof, as determined by the assessor; and such description shall designate the town, the number of lot, and the part thereof; and if a part of a lot listed, it shall state the number of feet along the principal street on which it abuts. If the name of the owner of any tract of land or lot shall be unknown, the word "unknown" shall be entered in the column of names opposite said tract or lot. If such land be situated in the Virginia military district, or is not embraced in any land district, it shall set forth the original survey or surveys, part or parts thereof, contained in each tract so listed. [61 v. 166, § 29; S. & S. 751.]

Return of exempted real estate.

SEC. 14. The district assessor, at the time of making the assessment of real property subject to taxation, shall enter in a separate list pertinent descriptions of all burying grounds, public school-houses and houses used exclusively for public worship, and institutions of purely public charity, and public buildings and property used exclusively for any public purpose, with the lot or tract of land on which such house or institution or public building is situated, and which are exempt from taxation; and he shall value such houses, buildings, property, and lots and tracts of land at their true value in money, in the same manner that he is required to

value other real property, designating in each case the township or town, and number of the school district, or the name or designation of the school, religious society, or institution to which each house, lot, or tract belongs; or if such property is held and used for other public purposes, he shall state by whom or how it is held. [56 v. 175, § 30; S. & C. 1438.]

Errors to be corrected:

SEC. 15. Each county auditor shall, from time to time, correct any errors which he may discover in the name of the owner, in the valuation, description, or quantity of any tract or lot contained in the list of real property in his county; but in no case shall he make any deduction from the valuation of any tract or lot of real property, except such as shall have been ordered, either by the state board or by the county board of equalization, or upon the written order of the auditor of state; which written order shall only be made upon a statement of facts submitted to the auditor of state in writing. [56 v. 175, § 35; S. & C. 1438.

But no deductions to be made, except, etc.

In case of erection of new or destruction of old structures.

SEC. 16. Each county auditor shall correct the valuation of any parcel of real property on which any new structure of over one hundred dollars in value may have been erected, or on which any structure of the like value shall have been destroyed, agreeably to the return thereof made in accordance with the provisions of this title by the assessor. [56 v. 175, § 36; S. & C. 1438.]

If auditor discover omission he shall correct the same, and how:

SEC. 17. If on careful examination of the returns of the district assessor, the county auditor discover that any tract of land or any lot, or part of either, shall have been omitted, he shall add the same to the list of real property, with the name of the owner, and shall forthwith notify the proper assessor of such omission, who shall forthwith proceed to ascertain and return the value of such tract or lot, or part thereof; and in case of the inability or neglect of the said assessor, the auditor may ascertain the value thereof and place the same opposite such property. [56 v. 175, § 38; S. & C. 1438.]

And when land omitted from duplicate.

SEC. 18. In all cases where any county auditor, by inadvertence or mistake, shall have omitted, or in any future year shall so omit, to enter upon the duplicate of his county any lands or town lots, situate within his county, subject to taxation, it shall be his duty, when he shall enter the same on the duplicate of the next succeeding year, to add to the taxes of the current year the simple taxes of each and every preceding year in which such land or town lot shall so have escaped taxation, as far back as the next preceding appraisement of real estate, unless in the meantime such lands or lots have changed ownership, in which case only the taxes chargeable since the last change of ownership shall be added. [56 v. 128, § 52; S. & C. 95: 73 v. 113, § 1.]

CHAPTER 4.

BOARDS OF EQUALIZATION.

ANNUAL COUNTY BOARD.

SECTION 1. How constituted, powers, and duties.

ANNUAL CITY BOARD.

2. How constituted and organized.
3. Powers and duties of above boards.
4. How to equalize.

ANNUAL STATE BOARD FOR BANKS.

5. How constituted, and their meeting.
6. Their powers.
7. State auditor to report result to county auditor.

ANNUAL STATE BOARD FOR RAILROADS.

8. How constituted, and their meeting.
9. Their powers.

DECENNIAL COUNTY BOARD.

10. How board constituted, meeting, and organization.
11. Proceedings, and rules to govern their orders.

DECENNIAL CITY BOARD.

12. How constituted, and organized.
13. Powers.

DECENNIAL STATE BOARD.

14. Abstracts to be sent to state auditor.
15. Election, organization, and duties.
16. Result to be certified to county auditors.

ANNUAL COUNTY BOARD.

Board of equalization, powers, and duties.

SECTION 1. There shall be an annual county board for the equalization of the real and personal property, moneys, and credits in each county, exclusive of cities of the first and second class, to be composed of the county commissioners and county auditor, who shall meet for that purpose at the auditor's office in each county, on the Wednesday after the third Monday in May, annually. Said board shall have the power to hear complaints and to equalize the valuation of all real and personal property, moneys, and credits within the county, and shall be governed by the rules prescribed for the government of decennial county boards for the equalization of real property: provided, that said board shall not reduce the value of the real property of the county below the aggregate value thereof, as fixed by the state board of

equalization, nor below its aggregate value on the duplicate of the preceding year, to which shall be added the value of all new entries and new structures over the value of those destroyed, as returned by the several township assessors for the current year: provided, further, that except as to new structures and structures destroyed and lands and lots brought on to the tax-list since the preceding decennial state board of equalization, the annual county board shall not increase or reduce the valuation of any real estate, except in cases of gross inequality, and then only upon reasonable notice to all persons directly interested, and an opportunity for a full hearing of the questions involved. [71 v. 92, § 44.]

ANNUAL CITY BOARD.

How constituted in cities of the second and third grades of the first class, and cities of the second class:

SEC. 2. In each city of the second and third grade of the first class, and each city of the second class, there shall be an annual board for the equalization of the value of the real and personal property, moneys, and credits in such city, to be composed of the county auditor and six citizens of such city appointed by the council thereof; said board shall meet at the office of the county auditor on the fourth Monday of May, and shall close their session on or before the fourth Monday of June, then next following. The board shall have power to equalize the value of the real and personal property, moneys, and credits within such city, and shall be governed by the rules, provisions, and limitations prescribed in the next preceding section for annual county boards. The members shall each be entitled to receive three dollars for each day necessarily employed in the performance of their duties, to be paid out of the county treasury; and in each city of the first grade of the first class there shall be a like annual board, with the same powers and duties, to be composed of the county auditor and six citizens of such city, to be appointed by the common council, the first appointments being of two for one year, two for two years, and two for three years, and thereafter annually two shall be appointed for three years, and all vacancies shall be filled for the unexpired terms; said board shall meet at the office of the county auditor on the fourth Monday of May, and close their session on or before the second Monday of July, and it may appoint all necessary clerks, not exceeding six; each member, except the auditor, shall receive five dollars per day, and each clerk, three dollars per day, for their services for the time actually employed in the discharge thereof, to be paid out of the county treasury.

How in cities of the first grade of the first class.

DUTIES AND POWERS OF ABOVE BOARDS.

The powers and duties of above boards.

SEC. 3. The county auditor shall lay before each of the above named boards, for the territory they respectively have jurisdiction over, the returns of the assessors for the current year, and also the valuation of the real estate, as the same

DECENNIAL CITY BOARD.

How constituted and organized.

SEC. 12. In each city of the first or second class there shall be a decennial board for the equalization of the value of the real property within such city, to be composed of the county auditor and six citizens of such city appointed by the council thereof; they shall convene at the office of the county auditor on the fourth Monday of October, in the year one thousand eight hundred and eighty, and every tenth year thereafter, and they shall severally take the same oath as that prescribed for members of the decennial county board; and a record of their proceedings and orders shall be kept by the auditor. [65 v. 166, § 40; S. & S. 751.]

Powers.

SEC. 13. The said board shall, as to the real estate within such city, have the same powers, perform the same duties, and be governed by the same rules, provisions, and limitations as the decennial county board. [65 v. 166, § 40; S. & S. 751.]

DECENNIAL STATE BOARD.

Abstracts of real property by auditors.

SEC. 14. Each county auditor shall, on or before the second Monday of October, one thousand eight hundred and eighty, and every tenth year thereafter, make out and transmit to the auditor of state an abstract of the real property of each township in his county, in which he shall set forth: 1st. The number of acres, exclusive of town lots, returned by the several assessors of his county, with such additions as shall have been made thereto. 2d. The aggregate value of such real property, other than town lots, as returned by the several assessors of his county, inclusive of such additions as shall have been made thereto under the provisions of this title. 3d. The aggregate value of the real property in each township of his county, as returned by the several assessors, with such additions as shall have been made thereto. [65 v. 166, § 41; S. & S. 751.]

Constitution, election, etc., of board of equalization.

SEC. 15. The state board of equalization shall consist of as many members as compose the state senate chosen at the last previous election of members of the general assembly, and representing the same districts, all of whom shall have the qualifications of electors; and the qualified electors of each senatorial district shall, at the October election, in the year one thousand eight hundred and eighty, and each tenth year thereafter, elect persons to serve as members of such board of equalization, in accordance with the provisions of this chapter; and the returns of the poll-books and certificate of election shall be governed by the law regulating the election of senators; and in case of vacancy in such office, either by death, resignation, or otherwise, the governor of the state shall have the power to appoint a person, who shall be a resident elector of the district so vacated, to fill such vacancy, as soon as he shall be informed thereof; the auditor of state shall, by virtue of his office, be a member of this board

The said board shall meet at Columbus on the first Tuesday of December, one thousand eight hundred and eighty, and every tenth year thereafter, and the members thereof shall each take an oath that he will, to the best of his knowledge and ability, so far as the duty devolves on him, equalize the valuation of real property among the several counties and towns in the state, according to the rules prescribed by this title for valuing and equalizing the value of real property; and having received from the auditor of state the abstracts of real property transmitted to him by the several county auditors, said board shall proceed to equalize the same among the several towns and counties in the state, in the manner hereinafter prescribed: 1st. They shall add to the aggregate value of the real property of every county which they shall believe to be valued below its true value in money, such per centum, in each case, as will raise the same to its true value in money. 2d. They shall deduct from the aggregate valuation of the real property of every county which they shall believe to be valued above its true value in money, such per centum, in each case, as will reduce the same to its true value in money. 3d. If they shall believe that right and justice require the valuation of any town or towns in any county, or of the real property of such county not in towns, to be raised or to be reduced, without raising or reducing the other real property of such county, or reducing it in the same ratio, they may, in every such case, add to or take from the valuation of any one or more of such towns, or of property not in towns, such per centum as they shall believe will raise or reduce the same to its true value in money. 4th. If, in their judgment, the aggregate value of all the real property of the state, as returned by the county auditors, is above or below its true value in money, they may increase or reduce it, but such increase or reduction shall not exceed twelve and one-half per centum of said aggregate: provided, that if any increase or reduction shall be made in the valuation of the grand aggregate, it shall only be made after the equalization of all the counties of the state, and when such increase or reduction is made, it shall be the same per cent. of the equalized valuation in every county of the state. 5th. Said board shall keep a true and full account of their proceedings and orders. [68 v. 33, § 42.]

Sessions of the board; oath.

Duties.

SEC. 16. When the state board of equalization shall have completed their equalization of real property among the several counties, the auditor of state shall transmit to each county auditor a statement of the per centum to be added to or deducted from the valuation of the real property of his county, specifying the per centum added to or deducted from the valuation of the real property of each of the several towns, and of the real property not in towns, in case an equal per centum shall not have been added to or deducted from each; and the county auditor shall forthwith proceed to add

Auditor of state to transmit equalization statement to county auditors.

to or deduct from each tract or lot of real property in his county the required per centum on the valuation thereof, as it stands, after the same shall have been equalized by the county and city boards of equalization; adding, moreover, or deducting, in each case, any fractional sum of less than fifty cents, so that the value of any separate tract or lot shall contain no fraction of a dollar. [56 v. 175, § 43; S. & C. 1438.]

CHAPTER 5.

LEVYING TAXES.

STATE TAXES.

SECTION
1. Rates of state taxes.
2. State auditor's annual certificate thereof to county auditors.

COUNTY TAXES.

3. Annual determination of amount by the commissioners.
4. Levy thereof at June session; levy in Hamilton county; in Lucas county; special in certain contingencies; when general fund may be increased.
5. Road and bridge levy at March session; special levy in certain case; separation of amount for bridges, and division of the fund.
6. Certain levies require a prior vote of the people.
7. Additional poor tax authorized.

TOWNSHIP TAXES.

8. When and how made.
9. Additional for liabilities incurred for the poor.
10. Additional road and village tax.
11. Road tax may be paid in labor, and how.

MISCELLANEOUS.

12. Taxes for railroad subscriptions.
13. Assessing transient trades.
14. Tax on dogs.

STATE TAXES.

Rates of state taxes.

SECTION 1. There shall be levied, annually, taxes for state purposes, on each dollar of valuation of taxable property, such sum or sums as now are, or may be, from time to time, provided by law. [73 v. 114, § 1.]

State auditor's annual notice to county auditors of rates of taxation.

SEC. 2. The auditor of state shall, on or before the fifteenth day of July, annually, give notice to each county auditor of the rates per centum required by the general assembly to be levied for the payment of the principal and interest of the public debt, for the support of common schools, for defraying the expenses of the state, and for such other purposes as shall

be prescribed by law; which rates or per centum shall be levied by the county auditor on the taxable property of each county on the duplicate, and shall be entered in one column, and denominated "state taxes." [56 v. 175, § 43; S. & C. 1438.]

COUNTY TAXES.

SEC. 3. The county commissioners shall, at their March or June session, annually, determine on the amount to be raised for ordinary county purposes, for public buildings, for the support of the poor, and for interest and principal of the public debt, and for road and bride purposes; and they shall set forth in the record of their proceedings specifically the amount to be raised for each of said purposes. [56 v. 175, § 51; S. & C. 1438.]

Commissioners to determine annually amount to be levied, and amount for each purpose.

SEC. 4. The commissioners, at their June session, annually, may levy on each dollar of valuation of taxable property within their county, for county purposes other than for roads, bridges, county buildings, sites therefor, and the purchase of lands for infirmary purposes, as follows: in a county where the amount of such taxable property does not exceed three millions dollars, not to exceed five mills; where the amount exceeds three millions and does not exceed five millions dollars, three and five-tenths; where the amount exceeds five millions and does not exceed eight millions dollars, two and five-tenths; where the amount exceeds eight millions and does not exceed eleven millions dollars, one mill and eight-tenths; where the amount exceeds eleven millions and does not exceed fifteen millions dollars, one mill and five-tenths; where the amount exceeds fifteen millions and does not exceed twenty-five millions dollars, one mill and three-tenths; where the amount exceeds twenty-five millions and does not exceed seventy millions, one mill and one-tenth; where the amount exceeds seventy millions and does not exceed one hundred millions dollars, seven-tenths of a mill; and, where the amount exceeds one hundred millions dollars, six-tenths of a mill: for the purpose of building county buildings, purchasing sites therefor, and lands for infirmary purposes, where the amount of taxable property does not exceed three millions dollars, not to exceed four mills and five-tenths; where the amount exceeds three millions and does not exceed five millions dollars, three mills and three-tenths; where the amount exceeds five millions and does not exceed eight millions dollars, three mills where the amount exceeds eight millions and does not exceed eleven millions dollars, two mills; where the amount exceeds eleven millions and does not exceed fifteen millions dollars, one mill and five-tenths; where the amount exceeds fifteen millions and does not exceed fifty millions dollars, one mill; and where the amount exceeds fifty millions, six-tenths of a mill: the commissioners of Hamilton county

At June session they may levy for county purposes:

For county buildings, and sites, and lands for infirmary:

In Hamilton county for Longview asylum:

Levies for all purposes in Lucas county:

may levy a tax not exceeding three-tenths of one mill on each dollar of valuation of taxable property in said county, to aid in support of Longview asylum: the commissioners of Lucas county shall, at their June session, annually, levy such amount as shall be necessary to provide for the ordinary or general expenses of the county, the building and repair of bridges and culverts, the maintenance of the poor, the repair of county buildings, and all other purposes which are paid out of the county treasury by order of the commissioners, the courts, or the auditor, and including any levy authorized by vote of the people, designating at the time of making said levy the amount for each separate fund: provided, that not exceeding five mills on the dollar of the valuation of taxable property within said county, shall be levied in any one year: provided, also, however, that when in any county, any county infirmary building or buildings, or children's home building or buildings, built or in process of construction, has, or have, or shall hereafter be, wholly or partly destroyed by fire, or other casualty, and such county shall be without sufficient funds applicable to the purpose with which to rebuild or repair such building or buildings so destroyed or injured, the commissioners, at any regular or called session, may levy a tax that will produce the sum required for such purpose, not exceeding, in any case, ten thousand dollars; and if the commissioners deem it advisable, they may anticipate the collection of such special tax by borrowing any sum not exceeding the amount so levied, at any rate of interest not exceeding seven per centum, per annum, payable semi-annually, and may issue notes or bonds therefor, payable when said tax shall be collected: and provided further, that whenever in any county the levy in the first clause of this section authorized, is deemed insufficient for general county purposes, the commissioners may increase said levy by any amount not exceeding six-tenths of a mill on the dollar valuation; but in such case the levies for other purposes shall be reduced to the same extent, so that the total levies for all purposes shall not exceed the limits in this chapter prescribed. [74 v. 92, § 1: 74 v. 180, § 1: 74 v. 76, § 1: 69 v. 111, § 1.]

Certain buildings, if destroyed, to be provided for by special levy:

Levy for general county fund may be increased: when and how.

Road and bridge purposes.

SEC. 5. The commissioners, at their March session, annually, may levy on each dollar of valuation of taxable property within their county, for road and bridge purposes, as follows: in a county where the valuation of taxable property exceeds one hundred and twenty millions dollars, not to exceed three-tenths of a mill; where the amount exceeds eighty millions and does not exceed one hundred and twenty millions dollars, five-tenths of a mill; where the amount exceeds fifty millions and does not exceed eighty millions dollars, seven-tenths of a mill; where the amount exceeds twenty millions and does not exceed fifty millions dollars, one mill and one-tenth; where the amount exceeds ten mil-

lions and does not exceed twenty millions dollars, one mill and five-tenths; where the amount exceeds five millions and does not exceed ten millions dollars, three mills; and, where the amount is less than five millions dollars, five mills and five-tenths; and of the tax so levied, the commissioners shall set apart such portion as they may deem proper to be applied to the building and repairing of bridges, which portion so set apart shall be called a bridge fund, and shall be entered on the duplicate in a separate column. and shall be collected in money and expended, except as may be otherwise provided by law, under the direction of the commissioners in the building or repair of bridges and culverts: provided, that in case an important bridge belonging to or maintained by any county, has been or shall become destroyed or dangerous to public travel, by decay, or otherwise, and the restoration thereof is deemed necessary for public accommodation, the commissioners may levy a special tax for that purpose not exceeding one mill and five-tenths, the proceeds of which shall be applied solely to such restoration; and the commissioners may anticipate the collection of such special tax by borrowing any sum not exceeding the amount so specially levied, or to be levied, at any rate of interest not exceeding eight per centum, and issue notes or bonds therefor, payable upon the collection of such special tax: provided, further, that in all cities of the first class, and all cities of the second class having a population exceeding twenty thousand, one-half the proportion of said bridge fund collected upon property within said cities—in all cases where city council shall demand it—shall be paid into the city treasury, and shall be expended by such city for the purpose of building and repairing bridges: provided, further, that the commissioners of Montgomery county shall levy not exceeding one mill and one-tenth for road and bridge purposes, and that said levy shall only be on the property subject to taxation outside of the city of Dayton, and the proceeds of such levy shall be applied exclusively to roads and bridges outside of said city; and the council of said city may, annually, levy on the taxable property within the same for bridge purposes a like tax of one mill and one-tenth, in addition to the total aggregate of taxation now authorized by said council, to be expended for the building and repairing of bridges within said city. [74 v. 92, § 2: 73 v. 111 §§ 1, 2.]

Half the bridge tax collected in cities to be paid over to them.

SEC. 6. The county commissioners shall not levy any tax, or appropriate any money, for the purpose of building public county buildings, purchasing sites therefor, or for lands for infirmary purposes, or for building any bridge, except in case of casualty, the expenses of which will exceed ten thousand dollars, without first submitting to the voters of the county, the question as to the policy of building any public county building or buildings, or for the purchasing sites therefor, or for the purchase of lands for infirmary pur-

Large improvements shall be submitted to the qualified voters of the county:

Time for submitting proposition:

Printed tickets:

Notice of election:

Duties of judges, and time for counting votes:

Counting votes:

On petition of tax-payers may again submit the question.

poses by general tax, which said submission shall be made at the annual spring or fall election, next after the proposition for such levy is adopted by the commissioners and placed on their record; each proposition shall be separately submitted, and printed tickets shall be provided by the commissioners, on which shall be printed, "For — tax, yes;" and "For — tax, no;" which blank shall be filled with a proper designation of the proposed improvement, as the notice may require; and said commissioners shall cause the same notice for such vote to be given as is required in the election for state and county officers. It shall be the duty of the judges of election in the several townships and wards in any county in which such question may be submitted, as aforesaid, on the day of said election, to open a poll for taking said vote, and to receive and count the ballots cast on each of such propositions, and within three days thereafter to return to the auditor of the county a full and correct abstract of said votes; and the said judges of election shall, in all respects, be governed by the laws regulating general elections, and shall be entitled to the same compensation for returning said poll-books, which shall be paid out of the county treasury on the order of the auditor; and the poll-books so returned shall, within five days from the time of holding such election, be opened, and the votes counted by the commissioners and auditor of the county; a correct statement of the result of which votes shall be kept by said auditor on file in his office for public inspection. If the majority of the votes so cast shall be against the policy of such improvements, the commissioners shall not assess any tax for that purpose, but the commissioners may, on the petition of not less than one hundred tax-payers of said county, again submit the same question at any regular annual spring or fall election, under the same rules and regulations as before provided. If at any such election a majority shall be found in favor of the improvements as aforesaid, then the commissioners shall be authorized to proceed to levy the tax: provided, that this section shall not apply to the construction of any public buildings or bridges commenced or contracted for prior to the passage of this title, or for which the commissioners have, in good faith, purchased the ground, or acquired materials for the same, and are now proceeding to construct. [74 v. 92, § 3.]

Additional poor tax authorized.

SEC. 7. Whenever, in any county, the funds applicable thereto are not sufficient for the support of the poor, the commissioners may levy for that purpose, in addition to the levies otherwise authorized, any rate not exceeding six-tenths of a mill on the dollar of valuation. [74 v. 92, § 4.]

TOWNSHIP TAXES.

SEC. 8. The trustees of each township shall, on or before the fifteenth day of May, annually, determine the amount of taxes necessary for all township purposes, and there shall be

levied, annually, by the county auditor, for township purposes, including the relief of the poor, but not including the support of common schools, or the payment of the interest and principal of the debts of the township, which such rates of taxes as the trustees of the respective townships may certify to the county auditors to be necessary, not exceeding one mill on each dollar of the taxable valuation of the property of the township which does not exceed two hundred thousand dollars, and eight-tenths of one mill on each dollar of such taxable valuation exceeding two hundred thousand dollars, and not exceeding three hundred thousand dollars; and one-half of one mill on each dollar of taxable valuation exceeding three hundred thousand dollars, and not exceeding five hundred thousand dollars; and four-tenths of a mill on each dollar of such taxable valuation exceeding five hundred thousand dollars, and not exceeding eight hundred thousand; and one-fourth of one mill on each dollar of such taxable valuation exceeding eight hundred thousand dollars: provided, that in counties where there are no county infirmaries, a further township tax, not exceeding two-fifths of a mill on each dollar of the taxable property of the township, may be levied for the relief of the poor, to be applied solely to that purpose. [56 v. 175, § 52; S. & C. 1438: 74 v. 92, § 5.]

Township tax levies.

Township liabilities for the relief of the poor.

SEC. 9. The trustees of any township which has incurred, or may hereafter incur, liabilities for the relief of the poor, beyond the amount raised by the levy now authorized, shall have power to make an additional levy, for the purpose of discharging such liabilities, not exceeding six-tenths of one mill on the dollar of the taxable property of such township. [74 v. 92, § 6.]

Additional road tax.

SEC. 10. If the trustees of any township shall deem an additional road tax necessary, they shall determine the percentum to be levied on the taxable property of their township, not exceeding one mill on the dollar, except in counties where the taxable property is less than ten millions, in which counties the trustees of the different townships thereof may, at their discretion, levy an additional road tax, not to exceed two mills on the dollar valuation of the taxable property of their township; which may be discharged in labor as hereinafter provided, and in addition thereto not exceeding one mill on the dollar for the same purpose to be collected in money; but where a township shall include an incorporated village, the rate of tax so fixed by said township trustees, shall not apply, or be assessed or collected from the property included within the incorporated limits of such village; but the council of any such village shall exercise the right conferred by this title on the trustees of townships, to make such additional levy, for road purposes, on the taxable property within the corporate limits of any such village, as trustees may, by this title, make for road purposes in their

Village council shall exercise rights of trustees.

respective townships; and said trustees and council shall certify the same to the county auditor, in writing, on or before the fifteenth day of May each year; and the auditor of the county shall assess the same on all the taxable property in the said township or village, and the same shall be collected in the December installment. [74 v. 92, § 7.]

Labor on public highways.

SEC. 11. Any person charged with a road tax, may discharge the same by labor on the public highways, within the proper time, at the rate of one dollar and fifty cents per day, and a ratable allowance per day for any team and implements furnished by any person, under the direction of the supervisor of the proper district, who shall give to such person a certificate specifying the amount of tax so paid, and the district and township wherein such labor was performed, which certificate shall in no case be given for any greater sum than the tax charged against such person; and the county treasurer shall receive all such certificates as money in the discharge of said road tax: provided, that when the commissioners of any county so direct, the supervisor shall write on the margin of his lists, opposite to the amount charged against all such as may pay the same by money or labor, the word "Paid," and shall return his list on or before the twenty-fifth day of September of the year in which levied to the township clerk, who shall write on the margin of the list sent him by the auditor, opposite to the amount charged against each person who may have paid the same in labor or money, as shown by the returns of the supervisor, the word "Paid," and shall forthwith forward the same to the county auditor, who shall charge all such as may remain unpaid, as shown by the returns of the township clerk, upon the duplicate of the proper county, and the same shall be collected as other moneys are collected, in the December installment, by the county treasurer. When such road tax is paid in labor, such labor shall be performed before the fifteenth day of September of the year in which levied.

County treasurers shall receive certificates as money for road tax.

Money or labor.

Collection of unpaid road tax.

Expenditure of funds.

All road taxes collected by the county treasurer shall be paid over to the treasurer of the township or municipal corporation from which the same were collected, and shall be expended on the public roads, and in building and repairing bridges, in the township and municipal corporation from which the said taxes were collected, under the direction of the trustees of the proper township or council of such municipal corporation; and all funds heretofore levied for road purposes, and not expended, shall be expended by the trustees of the township or council of the municipal corporation from which the same were collected, as other taxes collected under the provisions of this title. [74 v. 92, § 8.]

MISCELLANEOUS.

SEC. 12. The competent authorities of any county, city, or township, that shall have subscribed to the capital stock of any railroad company, and shall have issued its bonds or

other securities for the payment of such subscription, may, at any time within five years next before the principal of such bonds, or other securities, shall be payable, if the market price of the stock of such railroad company be less than seventy-five per cent. on its par value, levy, or cause to be levied, annually, on the taxable property of such county, city, or township, such tax not exceeding one mill on the dollar, as will be sufficient to balance the discount on the railroad stock held by such county, city, or township, by the time such bonds may become due; and the proceeds of all such taxes shall form, with such stock, a sinking fund, and shall be invested in the purchase of the bonds issued by such county, city, or township, or in other safe and productive securities, and shall be applied to the payment of the bonds so issued, and to no other use or purpose whatever. [56 v. 175, § 80; S. & C. 1438.]

Levy to pay bonds of county, city, or township, given for railroad subscription.

SEC. 13. Whenever a return is made to the county auditor, under section eight of chapter two of this title, of the value of the stock of a transient trader, the auditor shall assess against him his proper proportion for one month, upon such valuation, of all taxes of the current year; and certify the same to the county treasurer; and on the first day of each succeeding month, so long as such trader remains within the county offering to sell or otherwise dispose of goods of any kind, the auditor shall make a like assessment and certificate. [58 v. 134, §§ 2, 3; S. & S. 760.]

Assessing transient traders.

SEC. 14. In the tax list and duplicate there shall be columns for the number and value, and the auditor shall levy one dollar on each dog, and in addition thereto the proper tax on any valuation that may be fixed upon the dog by its owner. [74 v. 177, §§ 1, 3.]

Tax on dogs.

CHAPTER 6.

COLLECTION OF TAXES.

SECTION
1. When lien for taxes attaches; and what property liable to be seized and sold.
2. Lien on bank shares.
3. Bank may pay taxes and deduct amount from dividends.
4. Collection of tax of transient trader.
5. Agent of express or telegraph company to pay taxes.
6. And unlawful to act for such company in default for taxes.
7. Penalty for non-payment of tax on lands.
8. Owner of life estate, etc., to pay tax.
9. All persons holding lands shall list lands when the same become liable for taxation.
10. And pay the tax.
11. Guardians liable to wards for neglect.
12. And executors.
13. And agents and attorneys.
14. Their lien for money advanced.
15. Liability and forfeiture of tenants by curtesy or in dower for neglect.

SECTION
16. Lien, etc., for taxes paid by person having a lien.
17. Rights of part owner who pays taxes, or his own part, or all of a tract.
18. And duplicate of delinquent personal tax.
19. Collection of such duplicate.
20. Publishing the delinquents in such duplicate.
21. Annual reading of list of delinquent personal tax, and action of commissioners thereon.
22. Civil action authorized for delinquent tax.
23. Meaning of "personal tax," and tax on "personal property."
24. Taxes to be used only for purpose for which levied; dog tax.
25. When counsel fees against county treasurer paid by county.
26. Abstracts and statements to be made by county auditor to state auditor.

When lien of state for taxes attaches.

SECTION 1. The lien of the state for taxes levied for all purposes, in each year, shall attach to all real property subject to such taxes, on the day preceding the second Monday of April, annually, and shall continue until such taxes, with any penalty which shall accrue thereon, shall be paid; all personal property subject to taxation shall be liable to be seized and sold for taxes; and the personal property of any deceased person shall be liable, in the hands of any executor or administrator, for any tax due on the same by any testator or intestate. [59 v. 14, § 22; S. & S. 762.]

Lien on bank shares.

SEC. 2. Any taxes assessed on any shares of stock or the value thereof, of any bank or banking association, shall be and remain a lien on such shares from the first Monday of May in each year until such taxes are paid; and in case of the non-payment of such taxes at the time required by law by any shareholder, and after notice received of the county treasurer of the non payment of such taxes, it shall be unlawful for the cashier or other officer of such bank or banking association to transfer or permit to be transferred the whole or any portion of said stock, until the delinquent taxes thereon, together with costs and penalties, shall be paid in full; and no dividend shall be paid on any stock so delinquent, so long as such taxes, penalties, and costs, or any part thereof, remain due and unpaid. [64 v. 204, § 6; S. & S. 763.]

Unlawful to transfer stock until delinquent taxes are paid.

Bank may pay taxes and deduct amount from dividends.

SEC. 3. It shall be lawful for any such bank or banking association to pay to the treasurer of the county in which such bank or banking association may be located, the taxes that may be assessed upon its shares, as aforesaid, in the hands of its shareholders, respectively, and deduct the same from any dividends that may be due or may thereafter become due on any such shares, or deduct the same from any funds in its possession belonging to any shareholder, as aforesaid. [64 v. 204, § 7; S. & S. 763.]

Collection of tax of transient trader.

SEC. 4. Whenever and as often as the county auditor certifies to the county treasurer the amount of tax assessed upon return made by or for any transient trader, under section eight of chapter two of this title, the treasurer shall forthwith enter the same upon the duplicate and notify such

trader of the amount assessed; and in case of the neglect or refusal of such trader to pay the said amount within twenty-four hours after receiving such notice, the treasurer shall proceed to collect the same by any process or proceeding authorized in any case of delinquent personal property tax. [58 v. 134, §§ 2, 3; S & S. 760]

Agent of express or telegraph company to pay taxes of the company.

SEC. 5. The agent of every express or telegraph company shall retain in his hands for such company, and pay to the county treasurer, the amount of all taxes assessed against such company, and in case of the default of payment, the treasurer shall proceed to collect the same as in other cases of delinquent personal property tax: provided, that where there is more than one such agent of the same company in one county, the agent thereof in the principal city, town, or village of such county, may assume the payment of such tax, and upon so doing, the other agents in the same county shall not be required to retain funds to pay the same. [59 v. 91, § 6; S. & S. 769]

One may pay for all the offices of the county.

Unlawful to act as agent twenty days after tax due and unpaid.

SEC. 6. If the taxes assessed against any express company, or telegraph company, in any county in this state, shall remain due and unpaid to the treasurer of such county, for the period of twenty days after the time provided by law for the payment thereof, it shall be unlawful for any person or persons, or corporation, to act as agents, or do or transact any business for such company so in default to such county, until said tax, and interest, and penalty is fully paid; any person, or agent, manager or clerk of any corporation, who shall, after such default, directly or indirectly act as agent of, or do or transact any business whatever on account of or for the benefit of such company so in default, other than the payment of said tax, shall be held to be guilty of a misdemeanor, and, on conviction thereof, shall be fined in any sum not less than one hundred nor more than five hundred dollars, or punished by imprisonment in the county jail, and fed on bread and water only, not exceeding thirty days, or both, at the discretion of the court; after such default, made as aforesaid, any railroad company which shall, directly or indirectly, convey or carry for said defaulting express or telegraph company, any package of money, merchandise, or other articles, or transmit any telegraphic message, after having notice of such default, shall, for every such offense, forfeit and pay a sum equal to the amount of such tax due and unpaid, with the interest and penalty thereon, to be recovered by an action in the name of the state, in the county where such tax is assessed, with costs of suit. [59 v. 91, § 7; S. & S. 769.]

Penalty for so doing.

Penalty for certain acts of railroad company after notice of default.

Penalty on non-payment of real estate tax.

SEC. 7. When one half the taxes charged against any entry of real estate shall not be paid on or before the twentieth day of December, in that year, or collected by distress or otherwise prior to the February settlement, a penalty of fifteen per cent. thereon shall be added to such half of said taxes on the duplicate; and if said taxes and penalty, in-

cluding the remaining half of such taxes, shall not be paid on or before the twentieth of June next thereafter, or collected by distress or otherwise prior to the next August settlement, the same penalty shall be charged on said last half of said taxes; and the amount of the whole together shall constitute the delinquent taxes on such real estate, to be collected in the manner that is or may be prescribed by law; and if the amount of such delinquent taxes and penalty, together with one half of the taxes charged against such real estate for the current year, shall not be paid on or before the twentieth day of December, of the same year, the said delinquent taxes and penalty, and the whole of the taxes of the current year, shall be due, and be collected by the sale of such real estate, in the manner that is or may be authorized by law; and in case the first half of the taxes charged upon any real estate, shall be paid on or before the twentieth day of December, as provided by law, but the remaining half thereof shall not be paid on or before the twentieth day of June next thereafter, or be collected by distress or otherwise, prior to the next August settlement, as provided by law, then the same penalty shall be added to such unpaid taxes, and the same shall be treated as delinquent taxes, and, with the taxes of the current year, collected by the sale of such real estate, as aforesaid. [59 v. 9, § 5; S. & S. 779.]

Owner of life estate, guardian, agent, etc., to pay tax.

SEC. 8. Every person shall be liable to pay tax for the lands or town lots of which he or she may stand seized for life, by curtesy, in dower, or by a husband in right of his wife, or may have the care of as guardian, executor, or as agent, or attorney, having funds of the principal in his or her hands. [56 v. 175, § 69; S. & C. 1438.]

All persons holding lands shall list lands for taxation.

SEC. 9. It is hereby made the duty of every person seized of or holding lands, to list the same for taxation with the county auditor, on or before the third Monday of May next, after the same shall be subject to taxation, and in case of neglecting to list the same as aforesaid, the county auditor shall, when the same shall thereafter be listed, charge upon each tract so neglected to be listed, the taxes for each year the same shall have been omitted after becoming liable for taxation, together with twenty-five per centum penalty and six per centum interest thereon, in addition to the taxes of the current year. [56 v. 175, § 70; S. & C. 1438.]

Penalty for neglect.

Anil pay tax, unless, etc.

SEC. 10. It shall be the duty of each and every person holding lands as aforesaid, to pay the tax which may be assessed thereon each and every year: provided, that agents and attorneys shall not thus be obliged to pay such taxes, unless sufficient moneys of their principals be in their hands to pay the same. [56 v. 175, § 71; S. & C. 1438.]

Guardian's liability for neglect.

SEC. 11. Every person holding lands as guardian, as aforesaid, and neglecting or refusing to list or pay the taxes on the same, in manner aforesaid, shall be liable, in action to his or her ward or wards, for any damage his or her ward or

wards may have sustained by such neglect or refusal. [56 v. 175, § 72; S & C. 1438]

Executors.

SEC. 12. Every person so being seized, or having the care of lands as aforesaid, as executor, and who shall neglect or refuse either to list or pay the taxes on the same, in manner aforesaid, shall be liable, in an action to the devisee or devisees of the person whose executor he is, for any damage occasioned by such neglect. [56 v. 175, § 73; S. & C. 1438]

Agents and attorneys.

SEC. 13. Every person having the care of lands, as agent or attorney, having funds of the principal in his hands, neglecting or refusing either to list or pay the taxes on such lands, shall be liable, in an action to his principal, for any damage such principal may have sustained by such neglect or refusal. [56 v. 175, § 74; S. & C. 1438.]

Their lien on the land, etc., for money advanced, etc

SEC. 14. Every attorney, agent, guardian, or executor, seized or having the care of lands as aforesaid, who shall be put to any trouble or expense, in listing or paying the taxes on such lands, or who has to advance his own money for listing or paying the taxes on such lands, shall be allowed a reasonable compensation for the time spent, the expenses incurred, and money advanced, as aforesaid, which shall be deemed in all courts a just charge against the person for whose benefit the same shall have been advanced. [56 v. 175, § 75; S. & C. 1438]

Liability and forfeiture of tenants in curtesy or dower for neglect.

SEC. 15. If any person who shall be seized of lands as tenant by curtesy, or in dower, or who shall be seized of lands for life, or in right of his wife, shall neglect to pay the taxes thereon, so long that such lands shall be sold for the payment of the taxes, and shall not, within one year after such sale, redeem the same, according to law, such person shall forfeit to the person or persons next entitled to such lands in remainder or reversion, all the estate which he or she, so neglecting as aforesaid, may have in said lands; and the remainder man or reversioner may redeem said lands in the same manner that other lands may be redeemed after having been sold for taxes; and, moreover, the person so neglecting as aforesaid, shall be liable in action to the person next entitled to the estate, for all damages such persons may have sustained by such neglect. [56 v. 175, § 76; S. & C. 1438.]

Redemption in such case.

Lien, etc., for taxes paid by person having a lien.

SEC. 16. Any person having a lien upon real estate may pay the taxes thereon in so far as the same are a lien upon such real estate; and the amount of taxes so paid shall, from the time of payment, operate as a lien upon such real estate, in preference to all other liens, and the money so paid may also be recovered by action for money paid to his use against the person or persons legally liable for the payment of such taxes. [44 v. 114, § 3; S. & C. 1149]

Rights of a joint owner who pays his portion of tax.

SEC. 17. In all cases where any tract of land may be owned by two or more persons, as joint tenants, co-parceners, or tenants in common, and one or more of the proprietors shall have paid, or may hereafter pay the tax, or tax and

penalty, charged or chargeable on his or their proportion or proportions of such tract, and one or more of the remaining proprietors shall have failed, or may hereafter fail to pay his or their proportion of the tax, or tax and penalty, charged or chargeable on said land, and partition of said land has or shall be made between them, the tax, or tax and penalty, paid as aforesaid, shall be deemed to have been paid on the proportion or proportions of said tract, set off to the proprietor or proprietors, who paid his or their proportion of said tax, or tax and penalty; and the proprietor or proprietors so paying the tax, or tax and penalty, as aforesaid, shall hold the proportion or proportions of such tract, set off to him or them as aforesaid, free from the residue of the tax, or tax and penalty charged on said tract before partition; and the proportion or proportions of said tract, set off to the proprietor or proprietors who shall not have paid his or their proportion of said tax, or tax and penalty, shall be charged with and held bound for the portion of said tax, or tax and penalty, remaining unpaid, in the same manner as if said partition had been made before said tax, or tax and penalty, had been assessed, and said proportion or proportions of said tract, originally listed for taxation, in the name or names of said delinquent proprietor or proprietors; and whenever any lands so held by tenants in common shall be sold upon proceedings in partition, or shall be taken by the election of any of the parties to such proceedings, or when any real estate shall be sold at judicial sale, or by administrators, executors, guardians, or trustees, the court shall order the taxes and penalties, and the interest thereon against such lands, to be discharged out of the proceeds of such sale or election; and any part owner who shall pay the tax on the whole tract or tracts of which he is part owner, shall have a lien on the shares or parts of the other part owner for the tax paid in respect of their shares or parts which, with interest thereon, he shall be entitled to receive on sale or partition of such lands, and the collection of which, with interest, he may enforce like any other lien or charge. [56 v. 175, § 77; S. & C. 1438.]

Those not paying held liable as if partition had not been made.

A tax on lands sold at judicial sale to be paid out of proceeds of sale.

Part owner paying tax on whole tract shall have lien.

SEC. 18. Immediately after the semi-annual settlement in August, the county auditor shall, annually, make a tax-list and duplicate thereof of all the taxes on personal property remaining unpaid, as shown by the treasurer's books, and the delinquent record as returned by him to the auditor, which tax-list and duplicate shall contain the name, valuation, and amount of personal property taxes due and unpaid, and ten per centum penalty added to the said taxes; and he shall deliver said duplicate to the treasurer on the fifteenth day of September, annually. [74 v. 156, § 1.]

Duplicate of unpaid personal property tax to be made and delivered to treasurer.

SEC. 19. The treasurer shall forthwith proceed to collect the taxes and penalty on said duplicate by any of the means provided by law, and for his services he shall be allowed five per centum on the amount collected, which, with the cost of

Collection and settlement of this duplicate.

advertising, as hereinafter provided for, shall be allowed to him out of the same on his next semi-annual settlement, when said duplicate shall be settled and the balance of the funds collected distributed in proper proportions to the appropriate funds. [74 v. 156, §§ 2, 3]

Publishing the delinquents in such duplicate.

SEC. 20. On delivering said duplicate to the treasurer, the auditor shall, with the consent of the commissioners, publish the same for two consecutive weeks in one newspaper of the county of general circulation therein: provided, that before said list shall be so published, proposals shall be invited from all the papers published and of general circulation therein, and the publishing thereof shall be given to the lowest bidder, and the cost thereof shall be paid out of the county treasury. [74 v 156, § 4.]

Reading of the delinquent list of personal tax.

SEC. 21. The county commissioners shall, at their September session, annually, cause the list of persons delinquent in the payment on personal property to be publicly read; and they may at any time, if they deem the same necessary, authorize the treasurer to employ collectors to collect the same, or any part thereof, prescribing the compensation of such collectors, which shall be paid out of the county treasury. [56 v. 175, § 89; S. & C. 1438: 63 v. 43, § 1; S. & S. 780]

Authority of the treasurer.

SEC. 22. When any personal taxes, heretofore or hereafter levied, shall stand charged against any person, and the same shall not be paid within the time prescribed by law for the payment of such taxes, the treasurer of such county, in addition to any other remedy provided by law for the collection of such personal taxes, is hereby specially authorized and empowered to enforce the collection by a civil action in the name of the treasurer of such county against such person for the recovery of such unpaid taxes; and it shall be sufficient, having made proper parties to the suit, for such treasurer to allege in his bill of particulars or petition that the said taxes stand charged upon the said duplicate of said county against such person, that the same are due and unpaid, and that such person is indebted in the amount appearing to be due on said duplicate, and such treasurer shall not be required to set forth in his petition any other or further special matter relating thereto, and said tax duplicate shall be received as prima facie evidence on the trial of said suit of the amount and the validity of such taxes appearing due and unpaid thereon, and of the non-payment of the same, without setting forth in his bill of particulars or petition any other or further special matter relating thereto; and if, on the trial of the action, it shall be found that such person is so indebted, judgment shall be rendered in favor of such treasurer so prosecuting such action as in other cases; and the judgment debtor shall not be entitled to the benefit of the laws for stay of execution or exemption of homestead, or any other property from levy or sale on execu-

Mode of procedure.

Judgment shall be rendered.

tion in the enforcement of any such judgment. [74 v. 69, § 1.]

Meaning of certain terms

SEC. 23. The terms "personal tax" and "tax on personal property" are intended to include all taxes, including those due from corporations, except only tax on real estate as such.

Taxes for specific levies must be used for such purpose, and no other, until it is satisfied.

SEC. 24. The county auditor shall carefully ascertain the net amount collected for each particular purpose; and it shall not be lawful to use any specific fund for any other purpose than that for which the same was levied until the purpose for which such tax was levied shall have been satisfied; and the amount collected for tax on dogs shall be applied to indemnify loss by injury to sheep, so far as needed for that purpose. [56 v. 175, § 51; S. & C. 1438: 74 v. 177, § 8.]

When cost in counsel fees against treasurer, and paid by county.

SEC. 25. Whenever an action has been commenced, or may hereafter be commenced, against any person holding the office of county treasurer, or county auditor, or other county office, for performing, or attempting to perform, any duty authorized by or directed by any statute or statutes of this state for the collection of the public revenue, such treasurer, auditor, or other officer, shall be allowed and paid out of the count treasury reasonable fees of counsel and other expenses for defending such action or suit, and the amount of any damages and costs adjudged against him, which said fees, expenses, damages, and costs shall be apportioned ratably by the county auditor among all the parties entitled to share the revenue so collected, and by the said auditor shall be deducted from the shares or portions of revenue at any time payable to each, including as one of the said parties the state itself, as well as the counties, townships, cities, villages, and school districts, and organizations entitled as aforesaid: provided, that in every county in which there is a board of control having a solicitor to said board, it shall be the duty of the solicitor of said board of control to take charge of and attend to all actions against any of the officers above named in such county for performing, or attempting to perform, any of the duties aforesaid; and it shall be unlawful for any of said officers in such county to employ any other counsel to defend such action or suit. [73 v. 204, § 58.]

Proviso.

Abstracts and statements to be made by county auditors annually.

SEC. 26. The county auditor, on or before the first day of October, annually, shall make out and transmit by mail, to the auditor of state, a complete abstract of the duplicate of his county, which shall state the aggregate value of the taxable property and the total amount of taxes, for all purposes assessed thereon for that year; he shall, at the same time, also make out and transmit to the auditor of state an abstract of the number and value of each of the enumerated articles, the value of merchants' and manufacturers' stock, and the value of all other personal property, moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, and the value of all other articles of personal

property, as returned by the township assessors, or as fixed by the county board of equalization; said abstracts shall be made out in such form, and the statements shall contain such details, as the auditor of state shall prescribe. [57 v. 6, § 37; S. & C. 1453.]

CHAPTER 7.

DELINQUENT LANDS.

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2. Printers' fees for publishing delinquent and forfeited land lists.
3. Examination of treasurer's duplicate by auditor before list published.
4. Copy of notice to be recorded.
5. Proceedings when delinquent list not published.
6. Copy of newspaper to be sent to state auditor by county auditor.
7. Sale of delinquent lands.
8. How to proceed if purchaser fails to pay.
9. Auditor to attend sale and make record, and send copy to state auditor.
10. Certificate to purchaser and duty of county surveyor.
11. No deed to be made for two years.
12. Certificate assignable.
13. When deeds to be made, and how.
14. Effect of deed.
15. When survey may be dispensed with.
16. How purchaser of undivided part shall hold.
17. Lien for taxes passes to purchaser.
18. Sale not invalid because charged in wrong name.
19. County auditor may make deeds for lands heretofore sold.
20. When certificates have been lost or destroyed, how deeds made.
21. Minutes of deeds to be kept.
22. And note of redemption for sale.
23. When taxes regularly paid, sale void.
24. County auditor may make deed for land that after sale has, by change of county lines, been transferred to other county.
25. Auditor to transfer to name of purchaser land sold as delinquent or forfeited.

REDEMPTION OF DELINQUENT LANDS.

26. Application for redemption to be made to county auditor.
27. Lands may be redeemed within two years of sale or removal of disability.
28. How.
29. Part owner may redeem his part.
30. Proceedings of party, auditor, and treasurer on application to redeem.
31. Payment of redemption money to tax purchaser.
32. Note on certificate that deposit has been made to redeem, and note of redemption on record of tax sales.
33. Tax purchaser's improvements, made after two years from sale, to be paid for.
34. Only tenant's right to be sold in permanent leasehold, if the same sufficient.
35. If owner produce receipt for taxes returned delinquent, receipt to be received in payment.

Delinquent list to be published in one English and one German paper.

SECTION 1. Each county auditor shall cause the list of delinquent lands in his county to be published weekly for two weeks, between the twentieth day of December and the third Tuesday in January, in one newspaper in the English language, and no more, printed and of general circulation in his county, and also in one newspaper in the

German language, if there shall be printed and published a newspaper in the German language and of general circulation therein, and if no paper be printed therein, then in some newspaper in the English language having general circulation in his county, to which list there shall be attached a notice that said delinquent lands will be sold by the county treasurer as provided in the twenty-third section of this chapter, which said notice shall be in substance as follows, that is to say:

DELINQUENT TAX SALE.

Notice of sale.

The lands, lots, and parts of lots returned delinquent by the treasurer of ——— county, together with the taxes and penalty charged thereon agreeably to law, are contained and described in the following list, viz.:

[Here insert the list, with the name or names of the owner or owners of said respective tract of land or town lot, as the same are designated on the duplicate]

And notice is hereby given that the whole of said several tracts, lots, or parts of lots, or so much thereof as will be necessary to pay the taxes and penalty charged thereon, will be sold by the county treasurer at the court house in said county, on the third Tuesday in January next, unless said taxes and penalty be paid before that time, and that the sale will be continued from day to day until the said several tracts, lots, and parts of lots shall have been sold or offered for sale.

——— ———, *County Auditor.*

(*Date of notice*)

[69 v. 169, § 48.]

SEC. 2. There shall hereafter be allowed to the publishers of newspapers for advertising the delinquent and forfeited lists of the several counties, and the notice of sale, a sum not exceeding the following rates:

Fees for publication of all delinquent or forfeited lists.

For the notice of sale, ten dollars; for designating the several townships, villages, and cities, and the several wards in any city, fifty cents each; and for each tract of land, city or town lot, or part of lot, contained in each of said lists, thirty cents: provided, that in no case shall a greater sum than one half of the taxes and penalty due on any tract, lot, or part of lot, be allowed for advertising such tract, lot, or part of lot; and no such property shall be published in said list as [delinquent on which the taxes and penalty shall] have been paid on or before the twentieth day of December. [59 v. 78, § 53; S. & S. 29.]

Auditor to compare delinquent list with duplicate.

SEC. 3. Immediately before advertising such list of delinquent lands and lots, it shall be the duty of the county auditor to compare the same with the duplicate in the hands of the county treasurer, and strike therefrom all lands or town lots upon which the taxes, interest, and penalty of the preceding year, with the taxes of the current year, shall

have been paid, and proceed to advertise the remainder as herein provided. [56 v. 128, § 50; S. & C. 95]

Copy to be inserted at foot of record of delinquent list; certificate as to their publication.

SEC. 4. The county auditor shall, on or before the day of sale mentioned in such notice, insert, at the foot of the record, on delinquent list, a copy of such notice, and shall moreover certify on said record, immediately following such notice, the name of the paper, and the length of time such list and notice were published therein. [56 v. 128, § 49; S. & C. 95]

Proceedings when delinquent list not published.

SEC 5. In all cases where any county auditor, by inadvertence or mistake, shall have omitted, or in any future year shall omit, to publish the delinquent list of his county, according to the requirements of law, it shall be his duty, in case the taxes and penalty with which the land and town lots therein stand charged, shall not have been paid before the tenth day of August of the next succeeding year, to charge the said lands and town lots with the said taxes and penalty, and also the taxes of the current year, and record, certify, and publish the same as part of the delinquent list. [56 v. 128, § 51; S. & C. 95.

Paper containing list to be sent to auditor of state, and printers' account.

SEC. 6. It shall be the duty of the county auditor to send, by mail, to the auditor of state, one paper containing the list of delinquent and forfeited lands, and a copy of the account of the printer, as sworn to by him and allowed by the auditor. [56 v. 128, § 54; S. & C. 95]

When delinquent lands sold by county treasurer.

SEC. 7. The county treasurer, or his deputy, shall attend at the court-house in his county, on the third Tuesday in January, in conformity with the notice prescribed in section one of this chapter, and shall then and there, at and after the hour of ten in the forenoon, proceed to offer for sale, separately, each tract of land, or city or town lot, or part of lot, contained in said advertisement, on which the taxes and penalty shall not have been paid; and the person or persons offering at said sale to pay the taxes and penalty charged on such land, lot, or part of lot, for the least quantity thereof, shall be the purchaser or purchasers of such quantity; and the treasurer shall continue such sale from day to day until each tract, lot, or part of lot, contained in such advertisement, on which the taxes and penalty remain unpaid, shall have been sold or offered for sale. [59 v. 78, § 23; S. & S. 28]

Conditions of sale.

How to proceed if purchaser fails to pay.

SEC. 8. The person or persons purchasing such tract of land or town lot, or any part thereof, shall forthwith pay to the treasurer the amount of taxes and penalty charged thereon; and on failure so to do, the treasurer shall immediately offer said land or town lot again for sale, in the same manner as if no such sale had been made; and the person so failing to make payment shall forfeit and pay a penalty of twenty-five per centum on the amount of said tax and penalty to be recovered by a civil action, in the name of the treasurer, for the use of the county, before any justice of the peace or court having jurisdiction thereof. [56 v. 128, § 24; S. & C. 95.]

Auditor or deputy to attend sales, and make a record thereof.

SEC. 9. The county auditor, or his deputy, shall attend all such sales of delinquent lands and lots, made by the treasurer of his county, and shall make a record thereof in a substantial book, therein describing the several tracts of land and town lots offered for sale, as the same shall have been described in the advertisement aforesaid, and stating how much of each tract or town lot was sold, and to whom sold; and if any tract or lot shall remain unsold for want of bidders, he shall so enter it on the record; and the auditor shall make out and certify a copy of said record, and forward the same to the auditor of state, by the county treasurer, at the time such treasurer makes his annual return of state tax next after such sale. [56 v 128, § 25; S. & C 95]

To forward copy of record to auditor of state.

Certificate of purchase.

SEC. 10 The auditor shall make out and deliver to the purchaser of any land or lots, sold for delinquent taxes as aforesaid, a certificate of purchase, therein describing the land or lots so sold, as the same was described in the tax duplicate, and stating therein the amount of taxes and penalty for which the same was sold; and if only a part of a tract be sold, such certificate shall specify the quantity sold, and shall be directed to the county surveyor, whose duty it shall be, when requested by the purchaser, his assignee, or heirs, to lay off, by metes and bounds, in a square, as near as practicable, at the most north westerly corner of the tract from which the sale was made, the quantity so sold; and if the sale be made from an in-lot or out-lot in any town, or form any particular part thereof, it shall be the duty of the county surveyor so to lay off the part or portion sold, that it shall extend from the main or principal street, road, or alley which may be the most convenient front to such lot, to the rear of the lot, and to bound the same by lines as nearly parallel with the outlines of such lot as practicable. [56 v. 128, § 26; S. & C 95]

Duty of county surveyor under such certificate.

When survey and deeds shall be made.

SEC. 11. No deed shall be made by the county auditor for any land or lot sold as aforesaid for taxes, until the expiration of two years from and after such sale; nor shall the survey thereof required by the certificate of purchase be made until the expiration of that time. [56 v. 128, § 27; S. & C. 95]

Certificates assignable.

SEC. 12. Said certificates of purchase shall be assignable in law, and an assignment thereof shall vest in the assignee or his legal representatives all the right and title of the original purchaser. [56 v. 128, § 28; S. & C. 95.]

When auditor to make deeds.

SEC. 13. At any time after the lapse of two years from the time of such sale for taxes, if the land or lot so sold shall not have been redeemed, the county auditor or any of his successors in office shall, on request, and on production of the certificate of purchase, and in case of the sale of part only of a tract of land or lot, on production of the county surveyor's return of a survey, in case he shall deem such a survey necessary, in conformity with the requisitions of such certificate, execute and deliver to the purchaser, his

heirs, or assignee, as the case may be, a deed of conveyance for the tract of land or town lot, or such part thereof as shall have been sold as aforesaid: provided, that when two or more parcels of the same tract or lot of land have been or shall hereafter be sold for the non-payment of taxes, to the same purchaser or purchasers, it shall be the duty of the county auditor, on production of the certificates of the purchaser, or on production of the county surveyor's return of surveys thereof, in conformity with said certificates, when such surveys are required, to execute and deliver one deed of conveyance of the several parcels so sold, to the purchaser or purchasers, his or their heirs or assignees, which deed so executed or delivered shall vest in the grantee or grantees, his, her, or their heirs or assigns the same title, both in law and equity, as if the several deeds for each and every parcel so sold were or had been executed. [56 v. 128, § 29; S. & C. 95.]

When two or more tracts are sold to one purchaser, auditor to make one deed.

SEC. 14. The deed so made by the auditor shall vest in the grantee, his, or their heirs and assigns a good and valid title, both in law and equity, and shall be received in all courts as prima facie evidence of a good and valid title in such grantee, his heirs and assigns. [56 v. 128, § 30; S. & C. 95.]

Title by deed and its effect as evidence.

SEC. 15. In all cases where the whole of any tract of land has been heretofore or may hereafter be sold for non-payment of taxes, in different parcels to different purchasers, and the certificates of the sale of which said different parcels comprising the whole of said tract of land shall or may come into the possession of any one of said purchasers or their assignee by assignment, it shall be lawful for the county auditor of the proper county to dispense with the survey of said separate or different parcels, and to make, execute, and deliver one deed of conveyance for the whole of said tract to the assignee or purchaser so having the said certificates in his possession by assignment; which deed so executed and delivered shall vest in the grantee, his or her heirs or assigns, the same title, both in law and equity, as if separate deeds for each and every parcel of such tract so sold were or had been made after and upon the proper surveys heretofore required to be made in conformity with the laws then in force upon the subject. [53 v. 116, § 1; S. & C. 109.]

In what cases survey of land sold for taxes dispensed with.

SEC. 16. The purchaser, at a sale of lands or lots for taxes, of the interest of any joint tenant, tenant in common, or co-parcener, or of any part or portion of such interest, shall, on obtaining the deed from the auditor for the part or portion so by him purchased, hold the same as tenant in common with the other proprietor or proprietors of such land or lot, and be entitled to all the privilege of a tenant in common until legal partition of such land or lot shall be made. [56 v. 128, § 31; S. & C. 95.]

Purchaser of the interest of joint tenant, etc., to hold in common.

SEC. 17. Upon the sale of any land or town lot for delinquent taxes, the lien which the state has thereon for taxes

Lien of tax purchaser for purchase money, etc., if sale invalid.

then due shall be transferred to the purchaser at such sale; and if such sale should prove to be invalid on account of any irregularity in the proceedings of any officer having any duty to perform in relation thereto, the purchaser at such sale shall be entitled to receive from the proprietor of such land or lot the amount of taxes, interest, and penalty legally due thereon at the time of such sale, with interest thereon from the time of payment thereof, and the amount of taxes paid thereon by the purchaser subsequent to such sale; and such land or lot shall be bound for the payment thereof. [56 v. 128, § 32; S & C. 95]

Sale not invalid if tract charged in wrong name.

SEC. 18. No sale of any land or town lot for delinquent taxes shall be considered invalid on account of its having been charged on the duplicate in any other name than that of the rightful owner: provided, that such land or lot be in other respects sufficiently described on the duplicate, and the taxes for which the same is sold be due and unpaid at the time of such sale. [56 v. 128, § 33; S. & C. 95.]

Auditor may make deeds of lands heretofore sold.

SEC. 19. When by the provisions of any former law the collector of taxes or the county treasurer was authorized to make deeds for lands or lots by them sold for delinquent taxes, and the same has not been done, the county auditor of the proper county shall be and he is hereby authorized to make such deeds to all persons entitled thereto; and the deeds which shall be so made by the auditor shall be as good and valid in law as if made by the person authorized under such former law to make them. [56 v. 128, § 34; S. & C. 95]

When certificates have been lost or destroyed, how deeds made.

SEC. 20 In case any certificate or certificates shall have been at any time issued to any purchaser or purchasers of land for taxes, under any of the acts heretofore passed on that subject, which certificate or certificates having been mislaid, destroyed, or lost, and that fact being shown to the county auditor, and no deed or deeds having been executed therefor, said auditor, being fully satisfied from evidence of the existence and loss of any such certificate or certificates, shall, on application for that purpose, proceed to make and execute to such purchaser or purchasers a good and sufficient deed or deeds of conveyance for any such tract or tracts of land, which deed or deeds shall be as good and valid in law, to all intents and purposes, as if such certificate or certificates had not been mislaid, lost, or destroyed. [56 v. 128, § 35; S. & C. 95]

How auditor to keep minutes of deeds made.

SEC. 21. The county auditor shall enter, in a book to be kept in his office, a minute of all deeds by him made for lands and town lots, or parts thereof, sold for taxes, therein naming the person who stood charged with the taxes at the time of such sale, and the date of the sale, the name of the purchaser, a brief description of the land or lot so sold, the quantity sold, the amount for which the same was sold, the name of the grantee in the deed, and the date of its execution. [56 v. 128, § 36; S. & C. 95.]

And to note redemption of lands.

SEC. 22. When any tract or portion of land, town lot or part thereof, shall be sold for taxes, and afterward redeemed, it shall be the duty of the county auditor to insert a minute of such redemption, the date thereof, and by whom made, on his record of sales of land for delinquent taxes, and sign the same officially. [56 v. 128, § 37; S. & C. 95.]

Sale of land for taxes regularly paid, void.

SEC. 23. If the taxes charged on any land or lot be regularly paid, and such land erroneously returned delinquent, and sold for taxes, the sale thereof shall be void; and the money paid by the purchaser at such void sale shall be refunded to him out of the county treasury, on the order of the county auditor, and that so much of said tax as has been paid into the state treasury shall be refunded to the county treasury; and the county auditor shall retain the same in his next semi-annual settlement, and charge the state treasury therewith in said settlement. [56 v. 128, § 42; S. & C 95.]

Proceedings in such case.

When auditor may make deeds for lands in other counties.

SEC. 24. The county auditor of the county in which any land or town lot shall have been or may hereafter be sold for taxes under the provisions of this act, is hereby authorized and required to execute the proper deed therefor to the person or persons entitled to receive the same, whether the said land or town lot shall, at the time of the execution of said deed, continue to be within said county or not, in the same manner as though the said land or town lot still remained within the limits thereof, any law to the contrary notwithstanding. [56 v. 128, § 43; S. & C. 95.]

Auditor to transfer land sold for taxes.

SEC. 25. Every county auditor hereafter delivering any certificate of purchase of forfeited lands, or delinquent lands sold for taxes, shall immediately, on his duplicate, transfer the same into the name of the purchaser, charging therefor the sum of ten cents, which shall be considered part of the expenses of the sale; and if any county auditor shall neglect to make such transfer he shall be liable to action by any person injured thereby as for a neglect of official duty. [56 v. 128, § 47; S. & C. 95.]

REDEMPTION OF DELINQUENT LANDS.

Applications for redemption to be made to auditor.

SEC. 26. All applications for the redemption of lands or town lots sold for taxes shall be made to the county auditor of the county in which such lands or town lots are situated. [56 v. 175, § 93; S. & C. 1438.]

Lands sold for taxes may be redeemed within two years.

SEC. 27. All lands and town lots which have been or may hereafter be sold for taxes at delinquent sale, under the laws of this state, may be redeemed at any time within two years from and after the sale thereof; and all lands belonging to minors, femes covert, insane persons, persons in captivity, or persons serving in the army or navy of the United States during actual war, which have been or may hereafter be sold for taxes, may be redeemed at any time within two years from and after the expiration of such disability. [62 v. 112, § 92; S. & S. 781.]

How lands may be redeemed.

SEC. 28. Any person desiring to redeem any land or town lot sold at delinquent tax sale under or by virtue of any law of this state, within one year after the sale thereof, or within one year after the expiration of any of the disabilities named in section two of this chapter, may deposit with the county treasurer, upon the certificate of the county auditor, particularly describing such land or town lot, and specifying the same, an amount of money equal to that for which such land or town lot was sold, and the taxes subsequently paid thereon by such purchaser, or those claiming under him, together with interest, and fifteen per centum penalty on the whole amount paid, including costs, and one dollar to pay the expenses of advertising as hereinafter provided; and any person desiring to redeem any land or town lot so sold for taxes after the expiration of one year from the sale thereof, and within the time limited by law for such redemption, may deposit with the county treasurer, upon the certificate of the county auditor, particularly describing such land or town lot, and specifying the same, an amount of money equal to that for which such land or town lot was sold, and the taxes subsequently paid thereon by such purchaser, or those claiming under him, together with interest and twenty-five per centum penalty on the whole amount paid, including costs, and one dollar to pay the expense of advertising, as hereinafter provided. [62 v. 112, § 94; S. & S. 781]

Joint owner, etc., may redeem his proportion.

SEC. 29. When any joint tenants, tenants in common or co-parceners, shall be entitled to redeem any land or town lot, sold for taxes, and any person, so entitled, shall refuse or neglect to join in the application for the certificate of redemption, or from any cause, cannot be joined in such application, the auditor may entertain the application of any one of such persons, or so many as shall join therein, and may make a certificate for the redemption of such proportion of said land or lot as the person or persons making such application shall be entitled to redeem. [56 v. 175, § 95; S. & C. 1438]

Proceedings of party, treasurer and auditor, on application to redeem.

SEC. 30. Upon the presentation of any such certificate of the county auditor to the county treasurer, for the redemption of any land or town lot, sold for taxes, and upon the payment of the money into the county treasury, as aforesaid, the county treasurer shall give the person or persons making such payment, duplicate receipts therefor, describing the property or the land or town lot as the same is described in or upon the certificate of the auditor, as aforesaid; one of which receipts shall be registered by the treasurer, and immediately filed with the county auditor, by the person or persons or party receiving the same; and thereupon the auditor shall forthwith cancel the sale, and transfer the property, land, or town lot to the proper person or persons or party; and such receipt, when so filed, shall operate as an extinguishment of all rights, either in law or equity, conferred in any way or manner by such sale; and the audi-

tor shall publish a notice of such redemption in the same newspaper in which the advertisement of sale had been published, for the term of three weeks, either in a weekly or a daily paper, once in each week, at an expense not exceeding one dollar. [56 v. 175, § 95; S. & C. 1438]

Payment of redemption money to tax purchaser, etc.

SEC. 31. Upon the demand of the purchaser, or his legal representative, and the surrender of the tax certificate, and upon the payment of the auditor's fees, the county auditor shall draw his warrant upon the county treasurer in favor of such purchaser, or his legal representative, for the amount of money so deposited as hereinbefore mentioned, with the said treasurer, after deducting therefrom the treasurer's fees for such services. [56 v. 175, § 96; S. & C. 1438.]

When auditor to note on back of certificate that deposit has not been made.

SEC. 32. In all cases where such deposit shall not be made within two years from the time of the sale of lands or lots sold for delinquent taxes, or within six months from that of lots or lands forfeited to the state for non-payment of taxes, the auditor shall, at the request of the person presenting such certificate, note such fact upon the back of said certificate, and sign his name thereto. When any tract or portion of land or town lot or part thereof is thus redeemed, or any deposit thus made, it shall be the duty of the auditor of the county, to note such redemption or deposit, the date thereof, and by whom made, on his record of tax sales, and sign his name officially thereto. [56 v. 175, § 97; S. & C. 1438]

Note of redemption on record of tax sales.

Tax purchaser's improvements, how paid for, etc.

SEC. 33. In case any lasting and valuable improvements shall have been made by the purchaser at a sale for taxes, or by any person claiming under him, on any land or town lot, for which a certificate of redemption shall be made as aforesaid, the premises shall not be restored to the person obtaining such order, until he shall have paid or tendered to the adverse party the value of such improvements; and if the parties can not agree on the value of such improvements, the same proceedings shall be had in relation thereto, as shall be prescribed in any law existing at the time of such proceedings, for the relief of occupying claimants of land: provided, that no purchaser of any land or town lot, sold for taxes, nor any person claiming under him, shall be entitled to any compensation for any improvements which he shall make on such land or town lot, within two years from and after the sale thereof. [56 v 175, § 98; S. & C. 1438.]

Sale, etc., for taxes of lands and lots, etc., under permanent lease.

SEC. 34. Where lands or lots, liable to taxation, are held upon permanent lease, and with the improvements thereon, are taxed in the name of the lessee, if the same are suffered to become delinquent, and are brought to sale by the county auditor, for the non-payment of the tax, interest, and penalty due thereon, such sale shall be confined to the right of the lessee on the premises and the improvements thereon, if the same shall be sufficient to meet the tax, interest, and penalty, so assessed and due: provided, that nothing herein contained shall be so construed as to require such lands or lots to be differently described on the duplicate, or adver-

tised in any separate or distinct form, or in any other manner than other lands and lots under the provisions of existing laws. [42 v. 62, § 2; S. & C 1591.]

Proceedings when land is returned delinquent, upon which taxes were paid.

SEC. 35. Where any tract of land or town lots shall be returned delinquent for the non-payment of taxes, and placed on the duplicate of the succeeding year, and the owner or person liable to pay taxes therefor, shall produce the receipt of the treasurer for such taxes of the preceding year, it shall not be lawful for the county auditor or treasurer to make any deduction from the duplicate of such tax, interest, or penalty, but the same shall be chargeable to the treasurer, as if such receipt had not been produced: provided, that it shall be the duty of the treasurer to receive such receipt in discharge of the tax for the year that is returned delinquent, with the interest and penalty; and the auditor of the county shall credit such treasurer with the amount, and shall forthwith proceed, by action, to collect such tax, interest, or penalty from the treasurer who gave such receipt; and it shall be the duty of the prosecuting attorney to attend to any such suit so commenced by the auditor. [43 v. 3, § 1; S. & C. 1592.]

CHAPTER 8.

FORFEITED LANDS.

SECTION

1. What lands are forfeited to the state, and their assessment in the name of the state.
2. How redeemed before sale by the state.
3. Moneys so received to be charged to the treasurer.

SALE OF FORFEITED LANDS.

4. These lands to be sold, as well as those now forfeited, as those hereafter forfeited.
5. By whom sold.
6. Duty of county auditor as to sale.
7. Form of notice of sale.
8. Proceedings if lands not sold.
9. How forfeited lands redeemed after sale, and disposition of proceeds of sale.
10. Certificate to purchaser; deed and its effect; saving as to persons under disability.
11. Purchaser of undivided interest may have partition.
12. The purchaser deemed the assignee of the state, and his lien for taxes to be protected if he lose the lands.
13. Auditor of state to keep record of forfeited lands and biennially forward copy thereof to county auditor.
14. When county recorder to make return of sale.
15. Apportionment of proceeds of sales, and treasurer's percentage thereon.
16. When auditor of state may make deed for lands heretofore sold for taxes.
17. When county or state auditor may make deed after destruction or loss of certificate.

Lands not sold forfeited to the state.

SECTION 1. Every tract of land and town lot offered for sale by the treasurer, as hereinbefore provided, and not sold for want of bidders, shall be and the same is hereby declared to be forfeited to the state; and thenceforth all the right, title, claim, and interest of the former owner or owners thereof, shall be considered as transferred to, and vested in, the state, to be disposed of as the legislature may by law direct; and the county auditor shall, annually, return by his treasurer, a separate list of all lands or town lots so forfeited, with the description thereof, and the amount of tax due thereon, to the auditor of state, and all such lands or lots shall be preserved on the duplicates until sold or redeemed, and the taxes thereon regularly assessed, in the name of the state; which taxes shall be returned, annually, by the treasurer as delinquencies, and credited to him as other delinquencies, in his settlement. [56 v. 128, § 38; S. & C. 95.]

Auditor to return list of same to the auditor of state.

To retain same on his duplicates.

Forfeited lands—how redeemed before sale by the state.

SEC. 2. If the former owner or owners of any tract of land or town lot, which may be forfeited, as aforesaid, shall, at any time before the state shall have disposed of such land or lot, pay into the county treasury of the county in which such land or lot may be situated, or into the state treasury, all the taxes and penalties due thereon at the time of such forfeiture, together with the taxes and penalties which have since accrued on such land or lot (which sum shall be ascertained and certified by the auditor) the state shall, in such case, relinquish to such former owner or owners, all claim to such land or lot; and the county auditor shall then re-enter such land or lot on his tax-list, with the name of the proper owner or owners. [56 v. 128, § 39; S. & C. 95.]

Auditor to charge treasurer with all moneys received on forfeited lands, and report the same to the auditor of state.

SEC. 3. The county auditor shall charge the county treasurer with all moneys by him received under the provisions of the preceding section; and shall make out an annual list of lands and town lots, upon which payments shall have been made, as aforesaid, specifying therein the proportion of such money belonging to the state; and shall forward said list to the auditor of state, by the county treasurer, at the time of paying over the state tax, and the county treasurer shall pay into the state treasury the state's proportion of such money, at the time he pays the other taxes due the state. [56 v. 128, § 40; S. & C. 95.]

SALE OF FORFEITED LANDS.

Lands, etc., forfeited to the state to be sold.

SEC. 4. The lands, in-lots, out-lots, and parts of lots, which have become forfeited to the state, for the non-payment of taxes, and all lands which may hereafter become forfeited to the state by the non-payment of taxes, or otherwise, shall be sold and disposed of by the state, agreeably to the provisions of this chapter. The auditor of state shall cause all lands, in-lots, out-lots, and parts of lots, now forfeited to the state for the non-payment of taxes, and which have not since been purchased by the original owner or owners, or any other per-

Proceedings as to lands, etc., now forfeited.

son or persons, to be entered in a book to be provided for that purpose, which entry shall set forth the name, by township and county, as in case of other lands. [56 v. 175, § 99; S. & C. 1438.]

By whom sold.

SEC. 5. The auditor of state shall, annually, enter in the said book, all the lands which shall hereafter become forfeited to the state, for the non-payment of taxes; and, once in two years, shall make out a list of such forfeited lands, and forward the same to the several county auditors, who shall proceed to sell the same, agreeably to the provisions of this chapter; and all lands so offered for sale and not sold for want of bidders, and all lands so forfeited, which, for any cause, has not been or hereafter shall not be, so offered, shall be offered for sale under the provisions of this chapter, and not sold for want of bidders, shall be again advertised and offered for sale, by the county auditor, at the next subsequent sales by him made, under this chapter, until such lands shall be sold. [56 v. 175, § 100; S. & C. 1438.]

Duty of county auditor as to sale.

SEC. 6. The auditor of each county, on receiving from the auditor of state the list of lands within his county, as aforesaid, in case the tax and penalties due thereon shall not have been paid, on or before the fifteenth day of October next ensuing, shall forthwith, thereafter, cause notice thereof to be advertised four weeks successively, describing the lands in the same manner they are described on the list furnished by the auditor of state, in a newspaper printed in his county, if any such there be, and if not, in some newspaper in circulation therein, to all concerned, that if the tax, and penalties charged on said list, be not paid into the county treasury, and the treasurer's receipt produced therefor, before the time specified in this chapter for the sale of said lands, (which day shall be named in said notice), that then, and in that case, each tract so as aforesaid delinquent, on which the taxes and penalties may remain unpaid, will, on the second Monday of December thereafter, be exposed for sale at the court-house, or usual place of holding courts in such county, in order to satisfy such taxes and penalties; and the auditor in each county shall, on the said second Monday of December, attend at the court-house, or usual place of holding courts in said county, and proceed to sell the whole of each tract of land as contained in said list, at public auction, to the highest bidder; in selling whereof, he shall offer each tract separately, beginning with the first tract contained in said list, and so continue on through said list, until each tract contained therein shall be sold; the county auditor is hereby authorized to adjourn the sale therein specified, from day to day, until he shall have disposed of, or offered for sale, each and every tract of land specified in the notice; and the notice of sale required by this chapter to be given, shall set forth that the sale will be so continued: provided, that nothing in this section shall be so construed as to prevent said auditor from offering, in his discretion, any tract of land

Time and place of sale.

Auditor to adjourn sales from day to day until sold.

two or more times at the same sale. [56 v. 175, § 101; S. & C. 1438]

SEC. 7. The notice of sale prescribed in the next preceding section, shall be in substance as follows:

FORFEITED LAND SALE.

Form of notice of sale.

The lands, lots, and parts of lots in the county of ———, forfeited to the state for the non-payment of taxes, together with the taxes and penalty charged thereon, agreeably to law, are contained and described in the following list, viz:

[*Here insert the list.*]

And notice is hereby given, to all concerned, that if the tax and penalties charged on said list be not paid into the county treasury, and the treasurer's receipt produced therefor, before the second Monday in December next, each tract, lot, and part of lot so delinquent, as aforesaid, on which the taxes and penalties remain unpaid, will, on the second Monday in December next, be exposed for sale at the court house (or usual place of holding courts, if not at a court-house) in said county, in order to satisfy such taxes and penalties, and that said sale will be adjourned from day to day until each and every tract, lot, and part of lot of land, specified in said list, shall have been disposed of, or offered for sale.

—— ———, *County Auditor.*

(*Date of notice.*)

[59 v. 56, § 1; S. & S. 782.]

Proceedings if land not sold.

SEC. 8. If any tract or parcel of land shall not sell at such public sale for an amount sufficient to pay the taxes and penalty which stand against such tract, the auditor shall return the same as unsold, to be retained upon the list of forfeited lands, to be offered for sale the next succeeding sale as other forfeited lands: provided, that if any such tract or parcel of land may have heretofore been, or may hereafter be, offered for sale two succeeding sales, as above provided, and shall still remain unsold, the county commissioners of the county in which such tract or parcel of land or town lot is situate, may, at their regular annual session in June preceding the next regular sale, if in their opinion such tract or parcel of land is of less value than the amount of taxes and penalty due upon it, having fixed a minimum price for the same, order the auditor of the county to offer such tract or parcel of land for sale at the next regular sale of forfeited lands, and to sell the same to the highest and best bidder therefor, at not less than said minimum price, irrespective of the amount of taxes and penalty due upon it, and such sale shall convey the title to the said tract or parcel of land, divested of all liability for any arrearages of taxes or penalty which may remain after applying the amount for which it was sold thereon. [56 v. 175, § 102; S. & C. 1438.]

SEC. 9. Whenever any tract or parcel of land shall be hereafter sold, under the provisions of this chapter, at for-

How forfeited and sold lands may be redeemed.

feited sale, any person desiring to do so, may redeem the same, at any time within six months from the sale thereof, by depositing with the county treasurer, as is provided in chapter seven of this title, with reference to the redemption of lands sold as delinquent, the amount of said sale, together with fifty per centum thereon, and by paying all other expenses incidental to, and arising from said sale: provided, however, that if any of said forfeited lands shall be sold for a greater sum than the tax, interest, penalty, and costs, it shall be the duty of the auditor to charge said treasurer separately in each case, in the name of the supposed owner, with the excess above said tax, interest, penalty, and costs; and such treasurer shall retain in the treasury of his county the said excess, for the proper owner of said forfeited lands, and upon demand by such former owner, within six years from the day of such sale, pay such excess to said former owner; and in case said treasurer, upon such demand, shall not be fully satisfied as to the right of the person demanding the same to receive it, or in case of different claimants, it shall be the duty of said treasurer to commence a civil action by filing a petition of interpleader, in the court of common pleas of the county where such land was sold, wherein he shall make the person or persons claiming such excess, and the state, defendants, and such action shall be proceeded in as other civil actions; and, in all cases, the costs of such proceedings shall be paid by the person or persons claiming said excess, as the court shall order; and it shall be the duty of the prosecuting attorney of the county to attend to the same, in behalf of the treasury. [56 v. 175, § 103; S. & C. 1438.]

Excess of purchase money to be paid to owner, and when.

If doubtful who is owner, how to proceed.

Certificate to purchaser.

Survey.

Fees for deed.

SEC. 10. The county auditor in each county, on a sale being made by him, of a tract of land to any person or persons, under this chapter, shall give to such purchaser or purchasers, a certificate of such sale; and if the land so sold be not an entire original tract, and the county auditor shall deem it necessary, said certificate shall be directed to the county surveyor of his county, requiring said surveyor to proceed at the request of the purchaser or purchasers, his or their heirs, assignee or assignees, to ascertain the boundaries of such tract of land so purchased, unless said tract shall be holden in common with any other person or persons; in either case, on producing or returning to the county auditor the certificate of sale, where the said tract sold is an entire original tract, or where the said tract of land so sold is holden in common with any other person or persons, or on producing the plat and certificate of the county surveyor, attached to a copy of the certificate of sale, the county auditor shall, on the purchaser or purchasers, his or their heirs, assignee or assignees, paying to him the sum of one dollar and twenty-five cents, execute and deliver to such purchaser or purchasers, his or their heirs, assignee or assignees, a deed therefor, in due form, which deed shall be prima facie evi-

dence of title in the purchaser or purchasers: provided, that if any land shall be sold by virtue of this act, the property of any minor, feme covert, insane person, or person in captivity, or serving in the army or the navy of the United States during actual war, the owner or owners thereof shall have a right to redeem the same in the manner prescribed by chapter seven of this title, with reference to redemption of lands sold as delinquent and within the same time: provided, also, that when any tract or lot of land shall be sold by virtue of the provisions of this chapter, the taxes having been regularly paid previous to said sale, such sale is hereby declared void; and the purchaser or purchasers, his or their heirs, or assignees, on producing the certificate of sale to the auditor of state, shall be entitled to have his or their money refunded from the state treasury; and the auditor shall pay the same out of money appropriated for refunding taxes twice or improperly paid. [56 v. 175, § 104; S. & C. 1438.]

Legal effect of deed. Right of minors, femes covert, etc., to redeem.

Rights of parties if taxes have in fact been paid.

SEC. 11. Any person or persons claiming any land, in-lot, out-lot, or part of a lot, by virtue of any sales made by the provisions of this act, as tenant in common with any other person or persons, may apply for partition of the same, in the same manner as now is or may be provided for the partition of real estate; and on presenting the county auditor's deed, the court, before whom application for partition, as aforesaid, is made, shall set off to such person or persons the land claimed in said deed as his or their share, in the same manner as prescribed by law for the partition of estate or estates, in lands, tenements, or hereditaments of joint tenants, tenants in common, and co-parceners. [56 v. 175, § 105; S. & C. 1438.]

Purchasers may have partition as in other cases.

SEC. 12. The purchaser of any such lands, his heirs or assigns, shall, from the day of such purchase, be taken in all courts as the assignee of the state of Ohio; and the amount of taxes and penalties charged on the said land at the time it was sold, together with all legal taxes afterward paid thereon by such purchaser, his heirs or assigns, shall operate as a lien on said lands, and may be enforced as any other lien. In all cases where any claimant of any lands heretofore sold, or which may hereafter be sold for the non-payment of taxes, under any law of the state, his heirs or assigns shall recover, by action or otherwise, the land so sold, as aforesaid, for taxes, such claimant, his heirs or assigns shall be liable to refund to the purchaser, his heirs or assigns, the amount of taxes and penalties due to the state on the land when sold, together with all other taxes paid thereon by such purchaser, his heirs or assigns, up to the time of recovery, with interest; to be recovered, by action or counter-claim or otherwise, as the case may require; and the same shall be required to be paid to the person or persons entitled thereto, before such person or persons shall be evicted or turned out of possession by any claimant recovering, by action, the land so sold for taxes. [56 v. 175, § 106; S. & C. 1438.]

The purchaser deemed the assignee of the state—his lien.

May recover, if ejected, the taxes, etc.;

And how:

And not to be evicted until taxes, etc., refunded.

Auditor of state to keep record and forward list of lands hereafter forfeited in alternate years.

SEC. 13. It shall be the duty of the auditor of state to open and keep up the records required by this chapter, and to send out for sale, in alternate years, the lands and town lots hereafter forfeited to the state, and to be governed in all things in the future disposition of such lands and lots by the provisions of this chapter. Upon the redemption of any such lands or lots, or the sale thereof under the provisions of this title, the county auditor shall transfer the same on his tax-list from the state of Ohio to the proper owner or purchaser thereof; for which transfer he shall not be entitled to receive fees. [56 v. 175, § 107; S. & C. 1438.]

Lands redeemed to be transferred on county tax-list.

When county auditor to make return of sale.

SEC. 14. The county auditor of each county, selling any forfeited land under the provisions of this chapter, shall, within ten days after such sale, make return thereof to the auditor of state. [56 v. 175, § 108; S. & C. 1438.]

Apportionment, etc., of moneys, arising from sale of forfeited lands.

SEC. 15. The county auditors shall apportion to their several funds, and pay over to the county treasurer of the proper county, the amount of moneys received from the sale of lands and town lots forfeited to the state for the non-payment of taxes, after deducting the expenses of advertising, distributing said amount to the several funds for which said taxes were originally levied, and the county treasurer shall apply them accordingly, and shall receive two per centum on all moneys by him received, as provided in this section, and no more. [56 v. 175, § 109; S. & C. 1438.]

Treasurer's fees.

Auditor to make deeds for lands heretofore sold for taxes.

SEC. 16. The auditor of state is hereby authorized to make a deed for any tract or part of any tract of land that has heretofore been sold for taxes, in the same manner that the collectors of land tax of non-residents, sheriffs, collectors of counties or townships, were authorized to do, by virtue of the laws heretofore in force on that subject; and to the deed or deeds thus made, the auditor shall affix his seal of office, which shall be evidence of the execution of such deed; such deed shall have all the force and effect of deeds heretofore made by the collectors of land tax of non-residents, sheriffs, collectors of counties or townships; and for every deed thus executed he shall be entitled to receive seventy-five cents. [31 v. 23, § 1; S. & C. 113.]

Effect of such deeds.

Fees for executing deeds.

Deeds, how obtained when certificates lost or mislaid.

SEC. 17. In case any certificate or certificates shall have been at any time issued to any purchaser or purchasers of lands for taxes, under any of the acts heretofore passed on that subject, which certificate or certificates having been mislaid, destroyed, or lost, and that fact being shown to the auditor of state or county auditor, as the case may be, and no deed or deeds having been executed therefor, said auditor of state or county auditor, as the case may be, being fully satisfied from evidence, of the existence and loss of any such certificate or certificates, shall, on application for that purpose, proceed to make and execute to such purchaser or purchasers, a good and sufficient deed or deeds of conveyance for any such tract or tracts of land; which deed or deeds shall be as good and valid in law, to all intents and pur-

Effect of such deed.

poses, as if such certificate or certificates had not been mislaid, destroyed, or lost. [31 v. 23, § 2; S. & C. 113.]

CHAPTER 9.

ACTS AND PARTS OF ACTS REPEALED.

SECTION
1. Acts and parts of acts repealed.
SECTION
2. When act to take effect.

SECTION 1. The following acts and parts of acts are hereby repealed:

1. Sections twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, thirty-six, thirty-seven, thirty-eight, thirty-nine, forty, forty-two, forty-three, forty-six, forty-seven, fifty, fifty-one, fifty-two, and fifty-four of the act of April 4, 1859, entitled "an act prescribing the duties of county auditors." [56 v. 128; S. & C. 95.]

2. The act of April 8, 1856, entitled "an act to dispense with surveys of lands when the same has been sold in different parcels for the non-payment of taxes, and to authorize a conveyance of the same without such surveys." [53 v. 116; S. & C. 109.]

3. The act of January 15, 1833, entitled "an act authorizing the auditor of state and county auditors to make deeds in certain cases." [31 v. 23; S. & C. 113.]

4. Section three of the act of March 2, 1846, entitled "an act for the protection of purchasers at judicial and tax sales." [44 v. 114; S. & C. 1149.]

5. The act of April 5, 1859, entitled "an act for the assessment and taxation of property in this state, and for levying taxes thereon according to its true value in money," except sections thirty-eight, forty-seven, fifty-four, fifty-five, seventy-three, eighty-five, eighty-six, eighty-seven, eighty-eight, and ninety." [56 v. 175; S. & C. 1438.]

6. Section three of the act of March 12, 1844, entitled "an act to further amend the act defining the duties of county treasurers, and for other purposes." [42 v. 62; S. & C. 1591.]

7. The act of December 21, 1844, entitled "an act to amend an act [entitled an act] further to amend an act defining the duties of county treasurers, and for other purposes, passed March 12, 1844." [43 v. 3; S. & C. 1592.]

8. The act of February 20, 1865, entitled "an act to amend section one of an act entitled an act to provide for platting and recording fractions of land, passed February 5, 1859." [62 v. 14; S. & S. 20.]

9. The act of April 30, 1862, entitled "an act to amend sections twenty-three, forty-eight, and fifty-three of an act

prescribing the duties of county auditors, passed April 4, 1859." [59 v. 78; S. & S. 28.]

10. The act of May 8, 1868, entitled "an act to amend sections twenty-four, twenty-nine, thirty-one, thirty-nine, forty, forty-one, forty-two, forty-four, and forty-five of an act entitled an act for the assessment and taxation of property in this state, and for levying taxes thereon according to its value in money, as amended April 7, 1863." [65 v. 166; S. & S. 751.]

11. The act of April 13, 1865, entitled "an act to amend section fifty-six of an act entitled an act for the assessment and taxation of property in this state, and for levying taxes thereon according to its true value in money, passed April 5, 1859." [62 v. 144; S. & S. 755.]

12. The act of April 8, 1865, entitled "an act to amend the act entitled an act for the assessment and taxation of property in this state, and for levying taxes thereon according to its true value in money, passed April 5, 1859." [62 v. 105; S. & S. 756.]

13. The act of March 30, 1868, entitled "an act to amend section six of an act entitled an act to amend an act for the assessment and taxation of property in this state, and for levying taxes thereon according to its true value in money, passed April 5, 1859, passed February 25, 1862." [65 v. 38; S. & S. 758.]

14. The act of March 30, 1864, entitled "an act to amend section twelve of the act entitled an act for the assessment and taxation of property in this state, and for levying taxes thereon according to its true value in money, passed April 5, 1859." [61 v. 82; S. & S. 758.]

15. The act of March 29, 1861, entitled "an act supplementary to the act for the assessment and taxation of all property in the state, and for levying taxes thereon according to its true value in money, passed April 5, 1859, and to amend section six of said act." [58 v. 47; S. & S. 759.]

16. The act of May 13, 1861, entitled "an act supplementary to the acts in force in relation to the assessment and taxation of property according to its true value in money." [58 v. 134; S. & S. 760.]

17. The act of March 21, 1864, entitled "an act to amend section three of an act for the assessment and taxation of property in this state, and for levying taxes thereon according to its true value in money, passed April 5, 1859." [61 v. 39; S. & S. 761.]

18. The act of April 6, 1866, entitled "an act to provide for the valuation of lands included in new town plats, or additions thereto." [63 v. 174; S. & S. 762.]

19. The act of February 25, 1862, entitled "an act to amend an act for the assessment and taxation of property in this state, and for levying taxes thereon according to its true value in money, passed and took effect April 5, 1859." [59 v. 14; S. & S. 762.]

20. The act of May 1, 1862, entitled "an act supplementary to an act entitled an act for the assessment and taxation of property in this state, and for levying taxes thereon according to its true value in money, passed April 5, 1859." [59 v. 88; S. & S. 766.]

21. The act of April 16, 1867, entitled "an act to provide for the taxation of bank shares and bankers." [64 v. 204; S. & S. 763.]

22. The act of April 14, 1863, entitled "an act to amend section three of the act passed May 1, 1862, supplementary to an act entitled an act for the assessment and taxation of property of this state, and for levying taxes thereon according to its true value in money, passed April 5, 1859." [60 v. 114; S. & S. 768.]

23. The act of March 16, 1867, entitled "an act to provide for the equalization of the assessment of the property of railroads, and to repeal an act therein named." [64 v. 58; S. & S. 768.]

24. The act of May 1, 1862, entitled "an act for the assessment and taxation of express and telegraph companies." [59 v. 91; S. & S. 769.]

25. The act of February 24, 1863, entitled "an act supplementary to an act entitled an act for the assessment and taxation of express and telegraph companies, passed May 1, 1862." [60 v. 11; S. & S. 771.]

26. The act of April 13, 1865, entitled "an act to amend the first section of the act entitled an act for the assessment and taxation of express and telegraph companies, passed May 1, 1862." [62 v. 174; S. & S. 771.]

27. The act of February 7, 1861, entitled "an act to amend section five of an act entitled an act to provide for the semi-annual collection of taxes, passed April 2, 1859." [58 v. 9; S. & S. 779.]

28. The act of March 20, 1866, entitled "an act supplementary to an act entitled an act for the assessment and taxation of all property in this state, and for levying taxes thereon according to its true value in money, passed April 5, 1859." [63 v. 43; S & S. 780.]

29. The act of April 11, 1865, entitled "an act to amend sections ninety-two and ninety-four of an act entitled an act for the assessment and taxation of property in this state, and for levying taxes thereon according to its true value in money, passed April 5, 1859." [62 v. 112; S. & S. 781.]

30. The act of April 19, 1862, entitled "an act supplementary to an act for the assessment and taxation of property in this state, and for levying taxes thereon according to its true value in money, passed April 5, 1859." [59 v. 56; S. & S. 782.]

31. The act of March 2, 1871, entitled "an act to amend section forty-two of an act entitled an act for the assessment and taxation of property in this state, and for levying taxes thereon according to its true value in money, passed April

5th, 1859, as amended by section seven of an act passed May 8, 1868" [68 v. 33.]

32. The act of April 25, 1872, entitled "an act supplementary to an act entitled an act prescribing the rate of taxation for county, bridge, road, and township purposes, passed May 1, 1871." [69 v. 111.]

33. The act of April 27, 1872, entitled "an act to amend section forty-eight of an act prescribing the duties of county auditors, passed April 4, 1859, as amended April 30, 1862." [69 v. 169]

34. The act of April 18, 1874, entitled "an act to amend section forty-four of an act entitled an act for the assessment and taxation of property in this state, and for levying taxes thereon according to its true value in money, as amended May 8, 1868." [71 v. 92.]

35. The act of April 18, 1874, entitled "an act to amend section seventy-eight of an act entitled an act for the assessment and taxation of property in this state, and for levying taxes thereon according to its true value in money, passed April 5, 1859, as amended April 8, 1865." [71 v. 96]

36. The act of April 6, 1876, entitled "an act supplementary to an act entitled an act to amend section three of an act prescribing the rate of taxation for county, bridge, road, and township purposes, passed March 23, 1876, [April 3, 1876,] and to amend an act entitled an act supplementary to an act entitled an act to provide for the organization and government of municipal corporations, passed April 28, 1873." [73 v. 111.]

37. The act of April 8, 1876, entitled "an act to amend section sixteen of an act for the assessment and taxation of property in this state, and for levying taxes thereon according to its true value in money, passed April 5th, 1853." [1859.] [73 v. 138]

38. The act of April 11, 1876, entitled "an act to amend section fifty-eight of an act for the assessment and taxation of property in this state, and for levying taxes thereon according to its true value in money." [73 v. 204.]

39. The act of March 31, 1877, entitled "an act to secu e the collection of delinquent taxes. [74 v. 69]

40. The act of April 5, 1877, entitled "an act to authorize the levy of taxes to rebuild or make repairs to county infirmary or children's home buildings, when loss by fire or other casualty is sustained." [74 v. 76.]

41. The act of April 12, 1877, entitled "an act to provide for the equalization of the valuation of bank shares for taxation, and to repeal an act therein named." [74 v. 88.]

42. The act of April 19, 1877, entitled "an act prescribing the rate of taxation for county, bridge, road, and township purposes, and to repeal certain acts therein named." [74 v. 92.]

43. The act of April 19, 1877, entitled "an act to amend

section twenty of an act entitled an act for the assessment and taxation of property in this state, and for the levying taxes thereon according to its true value in money, passed April 5, 1859." [74 v. 99.]

44. The act of May 2, 1877, entitled "an act to provide for the collection of delinquent taxes." [74 v. 156.]

45. The act of May 4, 1877, entitled "an act to amend section nine of an act entitled an act to amend sections twenty-four, twenty-nine, thirty-nine, forty, forty-one, forty-two, forty four, and forty-five of an act entitled an act for the assessment and taxation of property in this state, and for levying taxes thereon according to its true value in money, as amended April 7, 1863, passed and took effect May 8, 1868.". [74 v. 175.]

46. Sections one, two, and three of the act of May 5, 1877, entitled "an act for the protection of wool growers, and the confiscation of dogs." [74 v. 177.]

47. The act of May 5, 1877, entitled "an act to limit taxation in certain counties in this state." [74 v. 180.]

SEC. 2. This act shall take effect and be in force from and after the first day of July next.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 11, 1878.

[House Bill No. 96.]

AN ACT

To reorganize the institution for the education of the deaf and dumb.

SECTION
1. Board of trustees—number, term, and residence.
2. Organization and general powers.
3. The superintendent—his powers and duties.
4. The steward—his bond, powers, and duties.
5. Advance of money to him, and his settlements.
6. Who may be admitted as pupils.
7. How long pupils may remain, and as to non-residents.
8. How pupils supported.
9. Trades and arts to be taught.
10. Printing and binding to be under the supervisor of public printing; how taught.
11. What printing and binding to be done.
12. Monthly and quarterly visitations, and the record thereof.
13. Annual reports.
14. Books, papers, etc., the property of the state.
15. Power to receive by gift, devise, or bequest.
16. Trustees, commissioners, and officers not to be interested in contracts.
17. Trustees not eligible to office of superintendent or steward.
18. Suits by the institution.
19. Repeals.
20. When act to take effect: retention of officers.

Board of trustees—number, term, and residence.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the institution for the education of the deaf and dumb shall be placed under the control of a board of trustees consisting of five members, two of whom shall be from the county in which said institution is located. Before entering upon their duties each of said trustees shall take an oath to support the constitution of the United States, and of the state of Ohio, and to faithfully and impartially discharge the duties required of them by law. Within a reasonable time after the passage of this act, the governor, by and with the advice and consent of the senate, shall appoint the said board of trustees, one to serve for one year, one to serve for two years, one to serve for three years, one to serve for four years, and one to serve for five years; and as their respective terms of service shall expire, their successors shall be appointed for the term of five years, in the manner herein provided. In case a vacancy shall occur in said board of trustees, the governor shall have power, as herein provided, to fill such vacancy for the unexpired term thereof: provided, that if the senate shall not be in session, the governor shall have power to fill vacancies that may occur, and submit the appointment so made to the senate, for its approval, at its next session; and, except as otherwise provided by law, the trustees shall receive no compensation, but shall be entitled to receive their necessary expenses in attending to their duties, which shall be paid by the disbursing officer of the institution.

Organization and general powers.

SEC. 2. The board of trustees shall appoint one of its number as president, to preside at its meetings, and another of its number as secretary, whose duty it shall be to keep a record of the meetings and proceedings of the said board, and attest the same. Said record shall be kept at the institution. The board shall have power to appoint, and, for good cause, remove the superintendent. They, with the superintendent, shall make such general rules as they may deem necessary for the successful management of the institution. They shall, upon nomination of the superintendent, appoint the teachers, steward, matrons, physician, masters and mistresses of shops, and shall fix the compensation of each, and of the superintendent, to be paid quarterly, keeping within the amount fixed by law: provided, that the superintendent may receive a sum not exceeding twelve hundred dollars per annum; the steward, a sum not exceeding eight hundred dollars per annum; the matron, a sum not exceeding four hundred dollars per annum; the assistant matrons, each, a sum not exceeding three hundred dollars per annum; and the physician, a sum not exceeding three hundred dollars per annum; the male teachers of the academic department, a sum not exceeding twelve hundred dollars, each, per annum; the male teachers of the grammar department, a sum not exceeding ten hundred and eighty dollars, each, per

annum; the female teachers of grammar department, a sum not exceeding four hundred and fifty dollars, each, per annum; the male teachers of the primary department, a sum not exceeding nine hundred dollars, each, per annum; the female teachers of the primary department, a sum not exceeding three hundred and sixty dollars, each, per annum; the master of shoe shop, seven hundred dollars per annum; the engineer, a sum not exceeding one thousand dollars per annum.

The superintendent, his powers and duties.

SEC. 3. The superintendent shall reside in the institution, and shall have the entire control of all its affairs, in all its departments, and shall be responsible to the board of trustees for the efficient management thereof, and for the faithful service of all persons employed therein. He shall have power, upon such terms as he may deem proper, subject to the approval of the board, to employ such attendants, servants, or other persons as may be necessary for the economical and efficient management of the institution, assign to them their respective places and duties, and may at any time discharge them from service, keeping a record of the cause or causes of such discharge. Said superintendent shall also have power, by virtue of his office, to solemnize marriages.

The steward, his bond, powers, and duties.

SEC. 4. The steward shall be well skilled in making purchases and keeping accounts, and, before entering upon the discharge of his duties, shall give bond to the state in the sum of twenty thousand dollars, with sureties to the satisfaction of the board of trustees, for the faithful performance of his duties. Under the direction of the superintendent, he shall purchase all supplies for the institution at their lowest cash value. He shall see that the grounds, and all other property belonging to the state, are properly preserved and kept in order, and shall perform such other duties as may be assigned to him by the superintendent and trustees.

Advance of money to him, and his settlements.

SEC. 5. She treasurer of state shall, from time to time, advance to the steward of the institution, on the order of the superintendent, indorsed by two of the trustees, on a warrant from the auditor of state, a sum not exceeding five thousand dollars at any one time, to meet the current expenses. The steward shall keep an accurate account in detail, always open to the inspection of the superintendent and trustees, of all the expenses paid out of the sums so advanced by the treasurer, and shall settle the same with the trustees and superintendent monthly, or oftener if required; and no additional order shall be drawn on the treasurer till the settlement herein required has been satisfactorily made by the said steward.

Who may be admitted as pupils.

SEC. 6. The institution shall be open to receive such deaf mutes, residents of the state, as the trustees and superintendent shall judge, from reliable information and examination, to be suitable persons to receive instruction, according to the method therein employed: provided, that no person

shall be received under six, or remain after arriving at the age of twenty-one years; and provided further, that no person shall be received who is addicted to immoral habits, or who has any contagious or offensive disease.

How long pupils may remain; and as to non-residents.

SEC. 7. Pupils admitted into the institution may, in the discretion of the board of trustees and superintendent, be permitted to remain such a portion of seven years as their progress shall seem to justify. In addition to the time hereinbefore specified, three years may be allowed to such pupils as give satisfactory evidence of marked ability, and justify the expectation that they may become useful teachers, or occupy other responsible positions in life: provided, that nothing herein contained shall be construed to prohibit the admission of pupils who are not residents of Ohio, if there shall be sufficient accommodations for such non-residents without excluding residents of the state, upon the payment of such sums and upon such terms as the trustees may determine; and the money so received from pupils not residing in this state shall be paid over to the steward, receipted for by him, and be by him certified into the treasury of the state.

How pupils supported.

SEC. 8. All pupils admitted into the institution who have a legal residence in the state shall be supported at the expense of the state: provided, that parents and guardians of such pupils shall be required to keep them comfortably and neatly clothed, and to pay their traveling and incidental expenses; and if such parents or guardians shall neglect or refuse to do so, the steward of the institution is hereby authorized to furnish the requisite clothing and pay the said expenses. For the clothing so furnished, and the expenses thus incurred, the steward shall make out a bill of items, charging the same to the current expense account of the institution, from which the amount shall be paid. The account so drawn up, signed by the steward, countersigned by the superintendent, and sealed with the seal of the institution shall be forwarded to the auditor of the county from which the pupil came, who shall pay the amount of said bill out of the county funds to the steward of the institution, to be credited to the current expense funds; and said auditor shall then proceed to collect the same in the name of the state of Ohio, as other debts are collected.

Trades and arts to be taught.

SEC. 9. Shoemaking, printing, and book-binding shall be carried on and taught in the institution, and such other trades and arts as shall be found adapted to the capacity and wants of the deaf and dumb, the trustees in this behalf having regard to the good of the pupils and the economical administration of the institution.

SEC. 10. The printing and book-binding shall be under the supervision of the supervisor of public printing; and the superintendent shall assign from among the pupils, male and female, such number, from time to time, as may seem

proper, and organize them into classes, and assign to each class such portions of each day as will best harmonize with their ordinary studies, and at the same time give sufficient opportunity to the teachers of printing and binding to attend to their instruction; and the superintendent, supervisor of printing, and teachers shall meet and consult monthly, and make any changes in the classes or order of instruction, and adopt such rules in regard thereto as experience may suggest, subject, however, to the approval of the trustees.

Printing and binding to be under the supervisor of public printing; how taught.

SEC. 11. The printing and book-binding for the state shall be done, so far as practicable, at this institution, and the supervisor of printing shall have reference to this object in the organization of the business and preparation for work. When the public printing or book-binding is let to others, the supervisor may arrange with the contractors to do any part of the work, in addition to the work for the state now let, that can be done at the institution on proper terms; if fair rates cannot be had from such contractors to employ the pupils engaged in this department, the supervisor may contract for and perform other printing and binding. The supervisor shall monthly render an account to the auditor of state of all moneys earned by this department, and pay into the state treasury all moneys received for such work. He shall, in his annual report, state particularly the capacity of said department with reference to the work required by the state.

What printing and binding to be done.

SEC. 12. There shall be visitations and thorough examinations of all parts of the institution monthly, by one or more of the said board, and quarterly by a majority of the same; and there shall be drawn up and placed on record a detailed statement of the condition of the institution, which record shall be subject to the order of the general assembly, and shall at all times be open to the inspection of the committees of the legislature on benevolent institutions.

Monthly and quarterly visitations, and the record thereof.

SEC. 13. Annually, the board of trustees and the superintendent shall meet at the institution, and shall make out full reports (accompanied by such reports from those employed in the institution as the board may deem necessary) of the condition of the institution, a detailed statement of all its receipts and expenditures, and shall be required at the end of each year to report the articles, quantity, price, and from whom purchased, and a full list of all persons employed therein, and the amounts paid and the terms upon which said persons have been employed during the year. The said annual reports, and the minor reports accompanying the same, shall be submitted to the governor, who shall cause the same to be printed, as provided by law.

Annual reports.

SEC. 14. All books, papers, vouchers, and contracts, pertaining to this institution, shall be the property of the state, and shall be carefully preserved.

State property.

SEC. 15. The board of trustees shall be capable of receiving by gift, devise, or bequest, moneys, lands, or other property, for the benefit of this institution, or any of its

Power to receive by gift, devise, or bequest.

inmates, and to hold and apply the same according to the terms of the donation.

Trustees, commissioners, and officers not to be interested in contracts.

SEC. 16. No trustee or officer of this institution shall be, either directly or indirectly, interested in any purchase for, or contract on, behalf of this institution; and, in addition to the liability of any trustee, or officer, violating this inhibition to respond in damages for any injury sustained by the institution by his act, he shall be forthwith removed from office.

Trustees not eligible to office of superintendent or steward.

SEC. 17. No trustee of this institution shall be eligible to the office of superintendent, or steward, of such institution during the term for which he was appointed, nor within one year after such term shall have expired.

Suits by the institution.

SEC. 18. Claims due to the institution may be sued for in the name of the institution.

Repeals.

SEC. 19. The following acts and parts of acts are hereby repealed:

1. The act of April 5, 1866, entitled "an act to reorganize the institution for the education of the deaf and dumb, and to repeal certain laws heretofore passed."

2. Sections one, four, and seven, of the act of April 11, 1867, entitled "an act supplementary to an act entitled 'an act to reorganize the institution for the education of the deaf and dumb, and to repeal certain laws heretofore passed,' passed April 5th, 1866."

3. The act of January 29, 1873, entitled "an act to amend section ten of an act entitled 'an act to reorganize the institution for the education of the deaf and dumb, and to repeal certain laws heretofore passed,' passed and took effect April 5th, 1866."

4. The act of February 14, 1873, entitled "an act to amend section eight of an act entitled 'an act to reorganize the institution for the education of the deaf and dumb, and to repeal certain laws heretofore passed,' passed April 5, 1866."

SEC. 20. This act shall take effect and be in force from and after its passage, but the present officers of said institution shall retain their places until their successors are appointed and qualified.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 11, 1878.

[House Bill No. 105.]

AN ACT

To amend section fifty of an act entitled "an act for the reorganization and maintenance of common schools," passed May 1, 1873, and to repeal section thirty-one of an act entitled "an act to amend and supplementary to an act entitled an act to provide for the organization, supervision, and maintenance of common schools," passed March 14, 1852, and a ts amendatory thereto; also, supplementary to an act for the support and better regulation of comm on schools in the town of Akron, passed February 8, 1847, and the acts amendatory thereto; also, supplementary to an act for the better regula ion of pub.ic sch.ols in cities, towns, etc., passed February 21, 1849, and the acts amendatory thereto.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio.* That section fifty of the above recited act be amended to read as follows:

Section 50. Each board of education shall establish a sufficient number of schools to provide for the free education of the youth of school age within the district, at such places as will be most convenient for the attendance of the largest number of such youth, and where in their judgment it may be for the advantage of the district to do so, they may organize separate schools for colored children; boards of education in two or more adjoining township districts may, in like manner, unite in a separate school for colored children, each board to bear its proportionate share of the expense of such school, according to the number of colored children from each district in said school, which shall be under the control of the board of education of the township in which the school house is situated; any board of education may establish one or more schools of higher grade than the primary schools whenever they deem the establishment of such school or schools proper or necessary for the convenience or progress in studies of the pupils attending the same, or for the conduct and welfare of the educational interests of such district; and the board shall continue each and every day school established by them for not less than twenty-four nor more than forty-four weeks in each school year: provided, that each township board of education shall establish at least one primary school in each sub-district of their township; and the boards of education of the districts in which a "children's home" is or may be established under an act entitled "an act for the establishment, support, and regulation of childrens' homes in the several counties of the state," etc., passed April 7, 1867, and in districts in which a county infirmary is or may be located, when requested by the board of trustees of such "children's home," or the directors of such county infirmary, are hereby authorized and required to establish in such home or infirmary a separate school so as to afford to the children therein, so far as practicable, the advantages and privileges of a common school education; and such school shall be continued in operation each year until

Schools to be provided, and where.

Separate schools for colored children.

Townships may join in establishment of such school.

Schools of higher grade than primary.

Length of school term.

Schools at "children's homes;"

and at county infirmaries.

the full share of all the school funds of the township or district belonging to said children, on the basis of the enumeration, shall have been expended; and all schools so established shall be under the control and management of the board of education or other school officers who have charge of the common schools of such district: provided, that in the establishment of said schools the county commissioners of the county in which such "children's home" or county infirmary may be established, shall provide the necessary school room or rooms, furniture, apparatus, and books, which they are hereby empowered to do; and, provided, further, that such boards of education shall incur no expense in supporting said schools, except in the payment of the teachers.

Who to provide rooms, furniture, etc., for such schools.

SEC. 2. The said original section fifty, of the act of May 1, 1873, and section thirty-one of the above recited acts, are hereby repealed.

SEC. 3. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 11, 1878.

[Senate Bill No. 142.]

AN ACT

To amend section ten of an act entitled "an act for the better security of head contractors, sub contractors, and materi l men, and to repeal certain acts therein named" (Laws 1877, page 165.)

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That section ten of said act be amended so as to read as follows:

How sub-contractors and others may obtain lien against money due head contractor, etc.

Section 10. That any sub-contractor or material man, laborer, or mechanic, performing any labor or furnishing any materials or machinery for the construction, alteration, removal, or repair of any property, appurtenance, or structure, as described in the first or third sections of the act of which this is an amendment, provided for in a contract between the owner or owners and the head or principal contractor, and under a contract between such sub-contractor, material man, laborer, or mechanic, and the principal contractor or some sub contractor, and whose demands therefor shall not be paid when due, may file with said owner or owners, his or her authorized agent, a sworn and itemized account of the amount and value of said labor or materials under the contract, express or implied, under which the labor was performed or material was furnished, with all credits and set off therein; and thereupon said owner or owners, his or their authorized agents or attorneys, shall detain from said head

and sub contractor, all subsequent payments due the contractor under his contract, with the owner aforesaid, as hereinafter provided, as security for said account, and those accounts or estimates of other sub contractors and material men, laborers, mechanics, or persons furnishing materials to any contractor who may intervene before the next subsequent payment under said contract or within ten days thereafter; and in order to notify his fellow sub contractors, material men, mechanics, or laborers, of such detention, said sub contractor, material man, or laborer, or mechanic, shall, when he files said account with said owner, his agent, or attorney, also file a copy thereof with the recorder of the county where such property is situate; and in case he fail to file said copy with said recorder, the filing the notice with the owner shall give him no preference over other claimants for filing which or making any copy thereof, or certificate of date of filing, said recorder shall be entitled to the same fees as is provided by law for like services in regard to chattel mortgages:

Effect of certain neglect of lienholder.

Provided, That if any lien has been taken to secure a claim about which there is a dispute, the party taking such lien shall, within thirty days thereafter, notify the owner of the property, or his agent or attorney, that such a lien is in existence, and if he fails to do so within the time prescribed, then the lien so taken shall be null and void:

Owner may notify lienholder to commence suit.

Provided, further, that the owner of any property upon which a lien has been taken to secure any mechanic, laborer, or material man, may notify in writing the owner of the lien, or his agent or attorney, to commence suit thereon and if he fails to commence the suit within sixty days after receiving such written notice, then the lien shall be null and void, but nothing herein contained shall prevent the claim from being collected as other claims are now collected by law.

SECTION 2. Said section ten is hereby repealed, and this act shall be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 11, 1878.

[House Bill No. 158.]

AN ACT

To amend section nine (9) of an act entitled "an act to authorize the board of county commissioners to lay out and establish free turnpike roads, and to repeal certain acts therein named," passed March 29, 1875 (Sayler's statutes, v. 4, p. 3460; 72 v. 93).

SECTION 1. *Be it enacted by the General Assembly of the State*

of Ohio, That section nine (9) of the above recited act be amended so as to read as follows:

How township levy and two days' labor to be expended.

Section 9. That so much of the taxes annually levied for road purposes by the trustees of townships, which may be collected within the bounds of any free turnpike road, including the two days' labor authorized by law, shall be laid out in the construction and repair of the same, under the direction of said commissioners, or their agents, until said free turnpike road is completed; and thereafter, so much of the taxes annually levied for road purposes by the trustees of townships, and the two days' labor authorized by law, shall be laid out under the direction of the supervisor of roads of their respective road districts, upon such free turnpikes and other roads within said districts, proportioning said labor in each district to such free turnpike and other roads therein, in such manner as the trustees of the township, after consultation with the commissioners of such free turnpike, shall direct, and in accordance with the laws relating to supervisors of roads. If the trustees aforesaid shall fail to direct the supervisors of any road district, the whole or any part thereof being within the bounds of any free turnpike road, to proportion the labor as provided in this section, annually, before the first day of May, and to give notice thereof in writing to the commissioners aforesaid, then all persons liable to do two days' labor, annually, on the public highways, residing within the bounds of any free turnpike road, shall do the same under the direction of the commissioners or agents of said road, after being notified three days previous to the time of doing the same, between the first day of April and the first day of July: provided, they may pay to said superintendent the sum of three dollars, in lieu of said two days' work, if paid when notified to do the work; in case of refusal or neglect to do the same, the person so offending shall pay a fine of one dollar, and shall further be liable, in case of non attendance, to the amount allowed for two days' work, to be collected by said road commissioners, in the same manner that supervisors are authorized to collect in similar cases.

SEC 2. That said section nine of the above recited act be and the same is hereby repealed.

SEC. 3. This act shall be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 11, 1878.

[House Bill No. 548.]

AN ACT

To amend section three of an act entitled "an act to reorganize the reform school for boys," passed March 21, 1878.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That section three of the above recited act be so amended as to read as follows:

Salary, etc., of superintendent.

Section 3 The superintendent shall receive such salary as may be fixed by the board of commissioners, not exceeding twelve hundred dollars ($1,200) per annum, payable monthly, and no other fees, perquisites, or personal expenses, but he shall be entitled to occupy suitable apartments, and have board for himself and family in the institution. The commissioners shall be allowed five dollars ($5) per diem, for the time actually employed in the business of the institution, for traveling and other expenses, but shall receive no other fees whatever; and this per diem shall not be for more than forty (40) days in any one year (63 v. 52, § 6; S. & S, 723).

Compensation of commissioners.

SEC. 2. That said original section three be and the same is hereby repealed, and this act shall take effect and be in force from and after its passage.

JAMES E NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 11, 1878.

[Senate Bill No. 20.]

AN ACT

To prevent the practice of resorting to distant courts to oppress the citizens of Ohio, and deprive them of their rights under the statutes of Ohio.

Unlawful to institute certain attachment proceedings without the state.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That if any person or persons, as principal, agent, or attorney, with intent thereby to deprive any bona fide resident of the state of Ohio of his or her rights under the statutes of Ohio to exempt personal earnings from application to the payments of debts in certain cases, shall send or cause to be sent out of the state of Ohio, any claim for debt, to be collected by proceedings in attachment, when the creditor, debtor, and person or corporation owing for the earnings intended to be reached by such proceedings in attachment, are each and all within the jurisdiction of the courts of the state of Ohio, such person, whether principal, agent, or attorney, shall be deemed and held to be guilty of a misdemeanor, and upon conviction thereof, shall be fined for each

and every claim so sent, in any sum not less than twenty dollars, or more than fifty dollars, at the discretion of the court.

Penalty for assignment of claims to be collected in violation of first section.

SEC. 2. That any person who shall, either directly or indirectly, assign or transfer any claim for debt against a citizen of Ohio, for the purpose of having the same collected by proceedings in attachment in courts outside of the state of Ohio, when the creditor, debtor, and person or corporation owing the money intended to be reached by proceedings in attachment, are each and all within the jurisdiction of the courts of the state of Ohio, such person shall be deemed and held to be guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than twenty dollars or more than fifty dollars, for each offense.

SEC 3. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 11, 1878.

[Senate Bill No. 163.

AN ACT

To authorize the election of two additional judges in the first judicial district.

Additional judges in first judicial district.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That there shall be elected, in the first judicial district of Ohio, by the electors thereof, under and in pursuance of the general election laws of the state governing the election of judges of the common pleas court, at the general election to be held on the second Tuesday of October, A.D. 1878, and every five years thereafter, two judges of the court of common pleas, in addition to the number heretofore provided by law for said district. Said additional judges shall be elected for the term of five years; their term of office shall begin on the first Monday of December following their election; they shall have all the powers and be subject to all the obligations, and shall perform all the duties pertaining to said office of judge of the common pleas court; shall receive the same compensation of other common pleas judges; and vacancies, if any in their offices, shall be filled as now provided by law.

SEC. 2. This act shall take effect from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 11, 1878.

[Senate Bill No. 13.]

AN ACT

To amend sections three, six, and seven of an act entitled "an act to require mortgages or bills of sale of personal property to be deposited with township clerks," passed February 24, 1846, (S. & C. p. 475,) and to repeal an act supplementary thereto, passed and took effect April 30, 1877. (O. L., v. 74, p. 149.)

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That sections three, six, and seven of the above recited act, be so amended as to read as follows:

Duties and fees of township clerks as to chattel mortgage filed with them.

Section 3 Upon receipt of any such instrument, the clerk receiving it shall file the same, and indorse thereon the time of receiving it, and shall deposit the same in his office, to be kept there for the inspection of all persons interested; and such clerk shall number every such instrument left with him, and shall enter in a book to be provided by the township trustees, alphabetically, the names of all the parties to such instrument, with the number thereon opposite each name, together with the date of such mortgage, the date of filing the same, and the amount secured thereby, which entry shall be repeated, alphabetically, under the name of every party thereto, and when such mortgage shall be re filed or canceled, the date of such re filing or cancellation shall be entered upon such record in the margin thereof opposite the original entry of the same; provided, that if the party depositing such mortgage shall desire the same recorded it shall be the duty of such recorder or clerk also to record the same, at the expense of the person depositing such mortgage, in a book to be provided for that purpose, at the expense of the township; and he shall be entitled to receive therefor, from the person depositing such chattel mortgage, ten cents per one hundred words; and when any such mortgage or bill of sale is re filed for the purpose of extending the lien as provided by law, such recorder or clerk shall enter on the margin of such record any affidavit, credit, or statement which may have been placed thereon since it was recorded, and he shall receive therefor the further sum of twenty-five cents. A certified copy of such record shall be received as evidence in all courts of this state; and where such mortgage or bill of sale shall have been satisfied, the party holding the same shall forthwith notify the recorder or clerk of the fact, and said clerk shall, without delay, note such cancellation and satisfaction of such chattel mortgage or bills of sale upon the margin of the record thereof, without charges therefor.

Certified copy of record to be received as evidence.

Section 6. For services under this act, the clerks shall be entitled to receive the following fees: For filing each instrument or copy, six cents; for searching each paper, six cents; for said entries in said book, six cents for every party to such instrument; and the like fees for certified copies of such instrument, or copies, as are allowed by law to county recorders for like services.

Section 7. In all townships in which the office of the recorder of the county is kept, such instrument shall be deposited with him, and he shall perform the duties imposed upon, and be entitled to the fees provided for, township clerks in this act, and his certificate shall have the same force in evidence.

SEC. 2. That said original sections three, six, and seven, so amended, be and the same are hereby repealed.

SEC. 3. That an act entitled "an act supplementary to the act to require mortgages or bills of sale of personal property to be deposited with township clerks," passed and took effect April 30, 1877, (O. L., v. 74, p. 149,) be and the same is hereby repealed.

SEC. 4. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 11, 1878.

[Senate Bill No. 158.]

AN ACT

To authorize the appointment of an assistant prosecuting attorney in certain counties.

Assistant prosecuting attorney in Lucas county.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That in counties containing a city of the first class, which has been advanced to that grade between decennial periods, the senior judge of the court of common pleas, residing in said county, may appoint an assistant prosecuting attorney, at a yearly salary not exceeding fifteen hundred dollars, to be fixed by the judge making the appointment; such salary shall be paid out of the treasury of the county, on the warrant of the county auditor. The term of appointment shall be for one year from date of appointment, and whenever there shall be a vacancy, such judge may renew the appointment.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 11, 1878.

[Senate Bill No. 105.]

AN ACT

To cure defects in the establishment of ditches.

Ditch taxes and assessments—not to be perpetually enjoined for certain errors;

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the collection of taxes or assessments, levied or ordered to be levied to pay for the location and construction of any ditch, drain, or water-course, laid out and constructed under any law of this state, shall not be perpetually enjoined or declared absolutely void in consequence of any error committed by the engineer or surveyor, or by the county auditor, or by the county commissioners, in the location and establishment thereof; nor by reason of any error or informality appearing on the record of the proceedings, by which any such ditch, drain, or water-course shall have been located or established; nor by reason of any error committed by the county auditor, county commissioners, or by the engineer or surveyor, in respect to the letting of uncompleted work, or the levying or assessment of any tax or assessment for the labor and expense of constructing such uncompleted portion, or section, or allotment of such ditch; but the court in which any proceeding is now pending, or may hereafter be brought, to recover, or to declare void the proceedings by which any ditch, drain, or water-course has been located or established, or to enjoin the tax or assessment levied, or ordered to be levied, to pay for the labor and expense, aforesaid, shall, if there be manifest error in said proceedings, set the same aside, and allow the plaintiff in the action to come in and show that he has been injured thereby; and the court may, on application of either party, appoint such person or persons to examine the premises, or to survey the same, or both, as may be deemed necessary; and the court shall, on final hearing, make such order in the premises as shall be just and equitable, and may order such tax or assessment to remain on the duplicate for collection, or order the same to be levied, or may perpetually enjoin the same, or any part thereof, or if the same shall have been paid under protest, shall order the whole, or such part thereof as may be just and equitable, to be refunded, the costs of said proceeding to be apportioned among the parties, or to be paid out of the county treasury, as justice may require.

But court may set proceedings aside, and appoint examiners, etc.

Duty of court on final hearing.

SEC. 2. The act of March 24, 1864. (61 v. 57; S. & S. 321) entitled "an act supplementary to the act entitled an act to provide for locating, establishing, and constructing ditches, drains, and water-courses," passed March 27, 1861, is hereby repealed; and this act shall take effect from its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W FITCH,
President of the Senate.

Passed May 11, 1878.

[House Bill No. 145.]

AN ACT

To prevent the introduction and spread of a cattle disease, commonly known as Texas or Spanish fever, by the importation and introduction of cattle into the state of Ohio, infected with or liable to impart to other cattle said disease, and providing for the punishment of, and the recovery of damages caused by the introduction of such diseased cattle from, owners of such cattle.

Cattle afflicted with "Texas fever" not to be brought into the state.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That it shall be unlawful for any person to bring into the state of Ohio any cattle infected with the disease commonly known as the "Texas, or Spanish fever," or any cattle liable to impart said fever to other cattle; provided, that this section shall not include common carriers who are not the owners of the cattle.

Penalty for violation of act.

SEC. 2. Any person violating the provisions of this act, shall be deemed and held to be guilty of a misdemeanor, and, on conviction thereof shall be fined in any sum not exceeding five hundred dollars nor less than fifty dollars; and shall, moreover, be liable to any party injured by bringing such cattle into the state, in the amount of any loss occasioned thereby.

Prima facia evidence of infection.

SEC. 3. Whenever any Texas or Cherokee cattle, liable to impart said disease, shall be brought into the state of Ohio, and any such disease as "Texas or Spanish fever" shall make its appearance within sixty days, and infect other cattle with said disease, that have been on the same highway, common, or pasture ground traveled over by such Texas or Cherokee cattle, such fact shall be deemed and taken as prima facia evidence, in actions to recover damages, that said Texas or Cherokee cattle were infected with the disease known as the "Texas or Spanish fever," and that they did import said disease, and the owner or owners of said Texas or Cherokee cattle at the time of the bringing of said cattle into the state, and the owner or owners of said cattle at the time said disease shall make its appearance, shall be jointly or severally liable for any damages resulting from said disease.

Liability of owners.

SEC. 4. This act shall take effect and be in force from and after its passage.

JAMES A NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 13, 1878.

[House Bill No. 388.]

AN ACT

To amend an act passed April 6, 1876, entitled an act supplementary to an act supplementary to an act to provide for the organization and government of municipal corporations, passed April 27, 1872, (vol. 73, page 108), and supplementary thereto.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio.* That section three of said act of April 6, 1876, be so amended as to read as follows, viz:

Tax on account of bonds issued by certain cities to build viaducts, etc.

To pay interest.

To create sinking fund.

Section 3. The council of any municipal corporation, which has heretofore, or shall hereafter, issue its bonds under and by authority of this act, is hereby empowered to levy annually upon the general tax duplicate of the city, in addition to its levies for all other purposes, a sufficient amount to pay the interest that shall accrue on all bonds so issued; and, also, in like manner, for the purpose of creating a sinking fund for the payment, at maturity, of the principal of said bonds, the council thereof may annually, until the bonds be fully provided for, levy and collect, in addition to the other taxes of the corporation, a tax not exceeding two mills upon said general tax duplicate; and it is hereby made the duty of the council of any municipal corporation within two years from the passage of the act to which this is amendatory, for the purpose of providing the means to pay the principal of all bonds issued by authority of the acts aforesaid, at maturity, to create a sinking fund, and to provide by ordinance for the control and management thereof, and no part of such fund so created shall be used for any other purpose whatever than that for which it was created; and it shall further be the duty of the council of such municipal corporation to appropriate to the use of such sinking fund, when so created, the tax last aforesaid levied and collected for such sinking fund, together with the proceeds of the sale, or lease, of all lands, or interest in lands acquired by purchase, appropriation, or otherwise, under authority of the act to which this is supplementary, whether such lands have already been sold or leased, or shall hereafter be sold or leased, and all profits, rents, and interests of every kind whatever, accruing to the city from, or in any way arising out of the use, sale, or occupancy of said lands, or interests in lands, or proceeds of the sale or lease of the same, shall be applied to this use, and no other.

Duty of council as to sinking fund.

Duty of sinking fund commissioners.

SEC. 2. That all surplus moneys now in the hands of the sinking fund commissioners appointed under and by virtue of an act entitled "an act supplementary to an act entitled an act to provide for the organization and government of municipal corporations," passed and took effect April 27, 1872, and the act supplementary and amendatory thereto and any moneys which may hereafter come into the hands of such commissioners over and above the amount necessary to discharge the principal of the viaduct and canal

bonds issued by such city, when the same shall mature, shall be applied, from time to time, to the payment of such other obligations of such city issued for general purposes, as the city council may, by ordinance, direct: provided, that this act shall not be so construed as to authorize an increase of the tax levy for municipal purposes above the maximum limit now fixed by law.

SEC. 3. That section three of the above recited act be and the same is hereby repealed.

SEC. 4. This act shall take effect from and after its passage.

JAMES E NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 13, 1878.

[House Bill No. 480.]

AN ACT

To amend section one of an act entitled "an act for the relief of benevolent and charitable associations managed by women," passed March 30, 1864.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That section one of the act passed March 30, 1864, entitled "an act for the relief of benevolent and charitable associations managed by women," be so amended as to read as follows:

Female managers may vest control of funds in male trustees.

How trustees appointed;

their terms fixed,

and vacancies filled.

Be it enacted by the General Assembly of the State of Ohio That any benevolent or charitable association incorporated by or under the laws of this state, and of which women are or may be trustees, managers, or directors, is hereby authorized and empowered to vest the custody, control, and management of all their endowment or capital funds and property in three male trustees, to be styled "fiscal trustees," who shall be appointed from time to time as follows: One by the court of common pleas of the county where such association may be seated, one by the probate court of such county, and one by the vote of a majority of the members of such association present at a regular meeting duly envoked [invoked] and they shall hold their office for three years, except the first trustees so appointed, who shall hold their office respectively for one, two, and three years and shall meet in the presence of the probate judge, and by agreement, or by lot, if they cannot agree, allot themselves accordingly, and said judge shall give to each a certificate of the term so allotted to him. In case of the death, resignation, or incapacity or removal from the county of either of such trustees, the vacancy shall be filled for his unexpired term by the same appointing power: provided, however, that said trustees shall not be appointed

except upon the written request of such association, filed in said probate court, in accordance with a resolution adopted by such association at a regular meeting thereof, duly convoked, and that until such appointment, said association, at a regular meeting thereof, may elect any number of trustees, not less than three, styled as aforesaid, and in whom shall be vested the custody and management aforesaid, and who shall hold their office for such time, not more than three years, as such association may, by its laws, determine.

Proviso.

Management until transfer made.

SEC. 2. That the original section one of the above recited act be and the same is hereby repealed.

SEC. 3. This act shall take effect and be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 13, 1878.

[House Bill No. 530.]

AN ACT

To amend an act of April 12, 1877, entitled "an act to amend an act entitled an act to authorize trustees of townships to appropriate land for cemetery purposes, passed and took effect April 3, 1867." (74 v. 87.)

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, The trustees of a township, when they are unable to obtain, by contract, upon reasonable terms, premises within their township suitable for a cemetery, may select, and, in the same manner provided by law for the appropriation of private property to the use of corporations, may appropriate any lands therein, not exceeding ten acres, not having thereon a dwelling house, barn, stable, or other farm building, or orchard or nursery, or a valuable mineral or medicinal spring, or a well actually yielding oil or salt water, and not being within two hundred yards of a dwelling house, unless the owner of such dwelling house consents thereto in a writing filed in court.

When township trustees may appropriate land for a cemetery.

SEC. 2. The said act of April 12, 1877, is hereby repealed, and this act shall take effect from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 13, 1878.

[House Bill No. 553.]

AN ACT

To amend section fifty-six of an act entitled "an act for the re-organization and maintenance of common schools," passed and took effect April 21, 1877. [O. L. vol. 74, page 106.]

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That section fifty six of the above recited act, be amended so as to read as follows:

Estimate for contingent fund.

Section 56. Each board of education at a regular or special meeting held between the third Monday in April and the first Monday in June of each year, shall determine by estimate, as nearly as practicable, the entire amount of money necessary as a contingent fund, to be expended for prolonging the several schools of the district, for the purchase of suitable sites for school houses, for leasing, purchasing, erecting, and furnishing school houses, and for other school expenses, not exceeding seven mills on the dollar of the taxable property of the district as valued for taxation: provided, however, that in cities of the first class having a population of not less than thirty thousand, nor more than seventy-five thousand inhabitants, said levy shall not exceed six mills on the dollar of the taxable property, and in such cities of the first class upon settlement of the treasurer of the board of education with the county auditor, there shall be placed of such levy of six mills at the rate of not less than two mills per annum, to the credit of a sinking fund, and said treasurer shall appropriate and apply said fund in payment of school bonds and interest thereon, and to no other purpose whatever, and any board of education of any city district of the first class are hereby authorized to issue bonds to obtain or improve public school property, and in anticipation of income from taxes for such purposes levied or to be levied, may from time to time, as occasion shall require, issue, and sell bonds, under the restrictions and bearing a rate of interest specified in section sixty-three, and shall pay such bonds and the interest thereon when due, but shall so provide that no greater amount of such bonds shall be issued in any one year than would equal the aggregate of a tax at the rate of two mills under this section, for the year next preceding such issue: provided, that the order of such board to issue such bonds be made only at a regular meeting thereof, and by a vote of a majority of all the members of such board, taken by yeas and nays, and entered on the journal of the board.

Maximum rate of levy.

Proviso as to certain cities.

Issue of bonds by city districts of first-class.

SEC. 2. That section fifty-six of an act "entitled an act for the reorganization and maintenance of common schools," be and the same is hereby repealed.

SEC. 3. This act shall take effect and be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 13, 1878.

[House Bill No. 165.]

AN ACT

Supplementary to an act entitled "an act to provide for the creation and regulation of incorporated companies in the state of Ohio," passed May 1, 1852.

When turnpike company may divide road, etc.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That any incorporated turnpike company of this state whose road extends into two or more counties, may subdivide said road into as many divisions as they may determine, as hereinafter provided, and may reorganize said incorporation, so as to have a separate corporation for each of said subdivisions.

How corporation for each division formed.

SEC. 2 That to carry out the purpose aforesaid, there shall be a meeting of the stockholders of said company, at the usual place of meeting, on a notice of at least four weeks, and if at such meeting at least two-thirds of the owners of the stock of the said company shall assent thereto, two thirds of the stock so voting, in writing, said subdivision shall be made, and the stock of said entire corporation shall be apportioned among the several new corporations as has been before agreed upon; each subdivision shall be liable for its proportion of the debts of the original corporation, in proportion to its stock; which action of the said stockholders' meeting, shall be duly recorded, and, when attested by the president and secretary of said meeting, shall be duly recorded, and, when attested by the president and secretary of said meeting, a copy thereof duly certified by such president and secretary, shall be filed with the secretary of state, and shall become the certificate of incorporation for each of said subdivided corporations, and shall be recorded as other certificates of incorporation are recorded.

Organization, etc., of new corporations.

SEC. 3 That after the said certificate is filed with the secretary of state, each of said subdivisions shall become a separate corporation, and reorganize as such separate corporation, by the election of a board of directors as other turnpike corporations, and thenceforth each of said corporations shall have the same powers and be conducted in all respects as other turnpike corporations are conducted in Ohio. All rights of stockholders in each subdivision, to their stock and property, shall remain and continue therein as if they had been the sole stockholders in the said subdi-

vision prior to said subdivision, subject, however, to the same liabilities of stockholders for debts of the corporation and legislative control, as all other turnpike companies in Ohio.

Names of new corporations.

SEC. 4. The name of each of the corporations of said subdivided corporations shall be such as may be assumed and designated in the certificate of organization.

SEC. 5. This act shall take effect from and after its passage: provided, all causes of action now existing, and suits pending for or against said original corporation, shall not be affected by the passage of this act.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 13, 1878.

[House Bill No. 25.]

AN ACT

Supplementary to "an act to provide for the appointment of commissioners to examine claims growing out of the Morgan raid, and prescribing their duties." (Vol. 61, page 85, S. & S. 466.)

Commission to examine Morgan raid claims.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the secretary of state, auditor of state, and treasurer of state, be and are hereby appointed a board of commissioners to examine and report upon such claims as it was the duty of the board of commissioners appointed under the act to which this is supplementary to examine, and which for any good reason, have not heretofore been presented to, and examined by any former commissioners appointed by authority of law.

By what act commission governed.

SEC. 2. Said commissioners shall, in their examination of such claims as are herein provided for in section one of this act, be governed by the requirements of the act to which this is supplementary, except as may be otherwise provided for in this act.

Meetings of commission.

SEC 3. Said commisssoners shall have such meetings in Columbus, prior to January 1 1879, as they may deem necessary for the proper performance of their duties, upon application of any claimant who may appear in person or by attorney, under such regulations as the board may adopt.

SEC. 4. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 13, 1878.

[House Bill No. 447.]

AN ACT

To define certain water-courses.

When established drains become public water-courses.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That whenever and wherever, within the state of Ohio, a ditch, drain, or water-course has been established and constructed for the public health, convenience, or welfare, either by private agreement between two or more individuals, whose real property has been affected thereby, or by a board of township trustees, or a board of county commissioners, and such ditch, drain, or water-course, thus located and established has been used for the purpose of drainage of private lands or public highways, for seven years or more without obstruction or interruption, the same shall be and hereby is declared to be a public water-course, notwithstanding errors, defects, or technicalities in the location, establishment, or construction of the same; and such public water-course shall, in all respects, be considered and treated as a natural water-course, and the public shall have and possess in and to such public water-course the same rights and privileges which pertain and relate to natural water-courses.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 13, 1878.

[House Bill No. 522.]

AN ACT

To authorize a temporary loan for sewerage purposes.

Temporary loan by board of public works, Cincinnati.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That in all cities of the first class having more than two hundred thousand inhabitants, the board of public works thereof are hereby authorized to borrow, on the faith and credit of such city, a sum of money, not to exceed one hundred and seventy-five thousand dollars, with interest on such installments payable semi-annually; and the council of said city shall make provision for the payment of the principal and interest of such loan out of the general revenues of the city, without any additional tax for such purpose.

For what purposes to be used.

SEC. 2. The proceeds of such loan shall be applied, by the board of public works of such city, for the completion of any trunk or main sewer (known as McLean avenue sewer) to the Ohio river, and for the payment of lands or

rights of way necessary for said sewer, and for no other purpose whatever.

SEC. 3. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 13, 1878.

[House Bill No. 46.]

AN ACT

Supplementary to an act entitled "an act for the reorganization and maintenance of common schools," passed May 1, 1873. (O. L., vol. 70, page 195.)

Contract between Zanesville board of education and McIntire school fund.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That wherever any fund has been provided by gift, devise, or bequest for the establishment or support of a school or schools for poor children in any city within this state having at the last federal census [or that may hereafter have] a population of ten thousand and eleven, it shall be lawful for the board of education of any such city to contract with the trustees having the management of such fund, for the admission to any such school of children resident in such city, and to pay out of the school fund under the control of said board of education, to such trustees, such tuition fee as may be agreed upon for each scholar so admitted to such school not entitled to such admission, according to the terms of the gift, devise, or bequest, as aforesaid, and also by such contract provide for such right of visitation or control of such school or schools by such board of education, as may be agreed upon: provided, that such school or schools shall be kept at the least equal in grade and efficiency to the corresponding public schools of the state; and provided, also, that every such contract shall expire in three years from the time of its execution, unless renewed or extended by agreement: provided, further, that this act shall in no manner apply to any school or schools supported or controlled by any church, congregation, sect, or religious denomination, or association of any kind.

SEC. 2. This act shall take effect from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 13, 1878.

[House Bill No 422.]

AN ACT

Supplementary to an act entitled "an act for the relief of the poor, and to repeal certain acts therein named." (Page 233.)

Salary of infirmary directors of certain counties.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That in every county in this state, containing over three hundred thousand inhabitants, the directors of the county infirmary shall each receive the sum of three hundred dollars per annum for their services in attending the regular and called meetings of the board, and for the transaction of any other business pertaining to the infirmary, and the secretary shall receive the further sum of one hundred dollars per annum, for his services as such secretary, and the compensation herein specified, shall be paid quarterly, out of the county treasury, on the warrant of the county auditor, and the directors shall not receive any other extra, or special compensation of any kind, neither shall they receive any allowance for traveling expenses, unless the same were incurred in traveling outside of the county, on business connected with the infirmary, and then only upon the allowance of the county commissioners, made before the expense was incurred.

SEC. 2. That section (4) four of the act to which this is supplementary, shall not apply to the counties above described, and this act shall take effect and be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 13, 1878.

[House Bill No. 461.]

AN ACT

To provide for the recording, in book form, of the military record of all persons who have served in the army of the United States in the war of the rebellion, which began April, A.D. 1861, and who were accredited to the state of Ohio as soldiers; and supplementary to an act entitled "an act appropriating money to pay for transcribing certain muster-rolls of Ohio volunteers into permanent record, and for obtaining information in regard to union soldiers' graves, and providing for a suitable head-stone," passed May 7, 1877.

Soldiers' record to be made by adjutant general.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That a record, in book form, shall be made under the direction of the adjutant-general of the state of Ohio, and kept in his office, of all persons who have served in the army of

the United States, who are accredited to the state of Ohio as volunteers, or otherwise, in any arm or branch of the service in the war of the rebellion, beginning in April, A.D. 1861, which record shall be for the inspection of all persons having any desire to examine the same.

In what form.

SEC. 2. Said record shall be a continuation of, and be in the same form, as near as may be, of the record of the military service of the soldiers of Ohio, began by Captain F. S. Moore, A.D. 1877. The form of said record book shall be printed and lettered, as follows, to wit:

RECORD OF.....OHIO VOLUNTEER.....IN THE SERVICE OF THE UNITED STATES.

Notes of difference in records.	Number of each grade.	Names.	Enlistments in ..... for ..... years.	Rank.	Age.	Enrolled and Commenced Duty.			Period of service.	Mustered into Service.			Entered Regiment.		Left Regiment.		Mustered out of	Personal history and final record.	Notes of difference in records.
						When.	Where.	By whom.		When.	Where.	By whom.	Rank.	Company.	Rank.	Company.			

Meaning of abbreviations.

SEC. 3. The abbreviations and explanations next following shall be printed in the top margin of each one of said forms, and the abbreviations shall be taken and held to mean the same as the explanation set opposite, to wit, the following abbreviations and explanations:

ABBREVIATIONS.

A. G. O.—Adjutant General's Office.
A. C. M.—Assistant Commissary of Musters.
Bk.—Block.
Bvt.—Brevet.
B. E. I.—Battles Engaged In.
Cir.—Circle.
C. O.—Circular Order.
C. S.—Current Series.
Div.—Division.
Det.—Detached—Detachment.
Det. R.—Detachment Roll.
D. C. M.—Division Court Martial.
E. T. S.—Expiration of Term of Service.
F. P. I.—Final Place of Interment.
Gr.—Grave.
G. O.—General Order.
G. C. M.—General Court Martial.
M. O.—Mustered Out.
M. O. C.—Mustered Out with Company.
M. O. R. O.—Muster Out Roll of Organization.
M. I. R. O.—Muster In Roll of Organization.
M. I. G. —Medical Inspector General.
N. Cy.—National Cemetery.
N. C. S.—Non-Commissioned Staff.
O. E.—Original Enlistment.
O. P. I.—Original Place of Interment.
O. M. I. R.—Officers' Muster In Roll.
Par.—Paragraph.
Pur.—Pursuant to.
P. C.—Pioneer Corps.
P. M. G.—Provost Marshal General.
Rct.—Recruit.
Ra.—Range.
Rec.—Record.
R. N. C.—Running No. in Cemetery.
Sec.—Section.
S. C.—Signal Corps.
S. O.—Special Order.
S. F. O.—Special Field Order.
S. G. O.—Surgeon General's Office.
S. C. D.—Surgeon's Certificate of Disability.
Ter.—Terrace.
Trans.—Transferred.

Tel. I. W. D.—Telegraphic Instructions from War Department.
U. S. V. Eng.—United States Volunteer Engineers.
V. E.—Veteran Enlistment.
V. R. C.—Veteran Reserve Corps.
W. D.—War Department.
A. A. A. G.—Acting Assistant Adjutant General.
A. A. Q. M.—Acting Assistant Quartermaster.
A. A. G.—Assistant Adjutant General.
A. C. S.—Acting Commissary of Subsistence.
A. D. C.—Aid-de Camp.
A. R. U. S. A., Pt. 5.—"Army Register, Part V."
A. C.—Army Corps.
Adjt.—Adjutant.
Art.—Artillery.
Asst.—Assistant.
Batt.—Battalion.
Battry.—Battery.
Brig.—Brigadier—Brigade.
C. S.—Commissary of Subsistence.
C. M.—Commissary of Musters.
Capt.—Captain.
Chap.—Chaplain.
Comdg.—Commanding.
Comdt.—Commandant.
Corp.—Corporal.
Co.—Company.
Col.—Colonel.
Cav—Cavalry.
Com-Sergt.—Commissary Sergeant.
Dept.—Department.
Drag.—Dragoon.
D. of C-d.—Department of the Cumberland.
D. of O.—Department of the Ohio.
Disc.—Discharged.
D. R. of D. M., at T. B.—Description Roll of Drafted Men at Tod Barracks.
F. S.—Final Statement.
Gen.—General.
G. S. W.—Gun Shot Wound.
Hd. Qrs.—Head Quarters.
Hosp.—Hospital.
Hosp. Stwd.—Hospital Steward.
H. Art.—Heavy Artillery.
I. C—Invalid Corps.
I. W. D.—Instructions from War Department.
Inf.—Infantry.
L. Ar.—Light artillery.
Maj.—Major.
Med. Dept.—Medical Department.
M. M. B.—Mississippi Marine Brigade.
Mil. Comdt.—Military Commandant.

Or. M. I. R.—Original Muster In Roll.
O. N. of D.—Original Notice of Death.
O. A. R.—Ohio Army Register.
O. I. T. W.—Ohio in the War.
Ord. Sergt.—Ordnance Sergeant.
Pvt.—Private.
Ph. Dis.—Physical Disability.
P. M.—Provost Marshal—Paymaster.
Q. M.—Quartermaster.
R. C. S.—Regimental Commissary of Subsistence.
R. Q. M.—Regimental Quartermaster.
Regt.—Regiment.
Regtl.—Regimental.
Sig. O.—Signal Officer.
Sergt.—Sergeant.
Sergt. Maj.—Sergeant Major.
Sub. Dept.—Subsistence Department.
Supt.—Superintendent.
Surg.—Surgeon.
Top. Eng.—Topographical Engineer.
Temp.—Temporary.
U. S. C. T.—United States Colored Troops.
U. S. A.—United States Army.
U. S. Art.—United States Artillery.
U. S. Cav.—United States Cavalry.
U. S. I.—United States Infantry.
V. V.—Veteran Volunteers.
Vol.—Volunteer—Volume.
Vols.—Volunteers.

From what the record to be made.

SEC. 4. Said record shall be made up from all rolls, books, orders, papers, or other printed or written evidence or said service, that have been or are authorized by law, order, or regulation of the army or navy, or war department, or any other military authority, duly authorized; and for the purpose of said record, said rolls, books, orders, papers, and other written evidence, shall be held and taken to be and mean the rolls and records of said service.

SEC. 5. This act shall take effect and be in force from and after its passage.

JAMES A NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 13, 1878.

[Senate Bill No. 100.]

AN ACT

To establish the seventh and eighth subdivisions of the third common pleas district, and to provide for the election of judges, and to amend and repeal a part of a certain act therein named.

State divided into five judicial districts.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the state shall be divided into five common pleas districts, as follows:

First district.

The county of Hamilton shall constitute the first district.

Second district and subdivisions.

The counties of Butler, Preble, Darke, and Montgomery, shall constitute the first subdivision; the counties of Champaign and Miami, the second subdivision; the counties of Warren, Clinton, Greene, and Clarke, the third subdivision; the counties of Clermont, Brown, and Adams, the fourth subdivision; the counties of Ross, Highland, and Fayette, the fifth subdivision; the counties of Pickaway and Madison, the sixth subdivision; and the county of Franklin, the seventh subdivision of the second district, and together shall constitute such district.

Third district and subdivisions.

The counties of Logan, Union, and Hardin, shall constitute the first subdivision; the counties of Shelby, Auglaize, Allen, Mercer, Van Wert, and Putnam, the second subdivision; the counties of Paulding, Williams, Fulton, Defiance, and Henry, the third subdivision; the counties of Seneca, Hancock, Wyandot, Crawford, Marion, and Wood, the fourth subdivision; the counties of Ottawa and Erie, the fifth subdivision; the counties of Morrow, Richland, and Ashland, the sixth subdivision; the county of Lucas, the seventh subdivision; and the counties of Sandusky and Huron shall constitute the eighth subdivision of the third district, and together shall constitute such third district.

Fourth district and subdivisions.

The county of Cuyahoga shall constitute the first subdivision; the counties of Lorain, Medina, and Summit, the second subdivision; the counties of Geauga, Lake, and Ashtabula, the third subdivision; the counties of Carroll and Columbiana, the fourth subdivision; the county of Stark, the fifth subdivision; the counties of Trumbull, Portage, and Mahoning, the sixth subdivision of the fourth judicial district, and together shall constitute such fourth district.

Fifth district and subdivisions.

The counties of Fairfield, Hocking, and Perry, shall constitute the first subdivision; the counties of Jackson, Vinton, Pike, Scioto, and Lawrence, the second subdivision; the counties of Gallia, Meigs, Athens, and Washington, the third subdivision; the counties of Muskingum, Morgan, Noble, and Guernsey, the fourth subdivision; the counties of Belmont and Monroe, the fifth subdivision; the counties of Jefferson, Harrison, and Tuscarawas, the sixth subdivision; the counties of Licking, Knox, and Delaware, the seventh subdivision; the counties of Wayne, Holmes, and Coshocton,

the eighth subdivision of the fifth judicial district, and together shall constitute the fifth district.

Three common pleas judges to be elected in Lucas county.

SEC. 2. That there shall be three judges of the court of common pleas for the seventh subdivision of the third common pleas district, who shall be residents of the county of Lucas, and who shall be elected by the qualified electors thereof. One of said judges shall be elected on the second Tuesday of October, A.D. 1878, whose term of office shall commence on the first Monday of November next following his election, and continue for five years. Another of said judges shall be elected on the second Tuesday of October, A.D. 1879, whose term of office shall commence on the second Monday in February, A.D. 1880, and continue for five years; and such judge shall again be elected at the annual election in October, A.D. 1884, and every five years thereafter, for the same term of office, commencing the second Monday in February next after his election. Another of said judges shall be elected on the second Tuesday in October, A.D. 1880, whose term of office shall commence on the second Monday in May, A.D. 1881, and continue for five years; and such judge shall again be elected at the annual election in October, A.D. 1885, and every five years thereafter, for the same term of office, commencing the second Monday in May next after his election.

The two judges residents of Lucas county to continue in office during their terms.

SEC. 3. That the two additional judges of the third subdivision of the fourth judicial district now in office, and who are residents of the county of Lucas, shall remain in office and be common pleas judges of the seventh subdivision of the third common pleas district for the remainder of their respective terms for which they were elected to serve.

Conduct of election of the three judges, and their powers.

SEC. 4. That the election for said three judges, and their successors in office, shall be conducted, and returns made, in the same manner as is provided by law for the election and return of state and county officers. Said judges shall exercise the same powers and jurisdiction, and perform the same duties as other judges of the court of common pleas; and any vacancy that may occur in the office of any such judge of the court of common pleas, by death, resignation, or otherwise, before the expiration of his term of office, shall be filled by appointment of the governor, until a successor is elected and qualified; and such successor shall be elected for the unexpired term, at the next regular election of state and county officers that occurs more than thirty days after the vacancy shall have happened.

Vacancy, how filled.

Two terms of district court in Lucas county in each year.

SEC. 5. That there shall be held in the county of Lucas, in each year, two terms of the district court.

SEC. 6. That an act entitled "an act authorizing the election of one additional judge of the court of common pleas in the first subdivision of the fourth judicial district of Ohio," which passed March 24th, and took effect May 1, 1864; also an act entitled "an act to authorize the election of one additional judge of the court of common pleas in the first

subdivision of the fourth judicial district of the state of Ohio," which passed and took effect March 10, 1870; and after the enacting clause, all of section one of the act entitled "an act to change the common pleas districts of the state and to give greater efficiency to the common pleas and district courts, and to repeal certain parts of an act therein named," passed May 10, A.D. 1878, be and the same are hereby repealed.

SEC. 7. This act shall take effect and be in force from and after the first Monday in October, A.D. 1878.

JAMES A. NORTON,
Speaker pro. tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 13, 1878.

[House Bill No. 337.]

AN ACT

To appropiate money to repair the public works and render them fit for navigation.

WHEREAS, The public works of this state, being the canals and their appurtenances, were, on the first day of June, 1861, leased by the state to Kent Jarvis and others, for a period of ten years, at a yearly rental of twenty thousand and seventy-five dollars ($20,075); and,

WHEREAS, On the 30th day of May, 1867, said lease was extended in its operation, for an additional period of ten years, to terminate on the first day of June, 1881, upon the same terms and conditions as specified in the original lease; and,

WHEREAS, On the first day of December, 1877, the lessees of said public works assumed to surrender and abandon the same to the state, and have refused to pay any more rent under said lease; and,

WHEREAS, The attorney-general of this state has expressed the opinion officially that said lease has not been terminated by any action of the state or otherwise, but is still in full force, and that said lessees are liable on their bond for said rents, and any injury to said public works, which question is now in process of adjudication in the courts of this state; and,

WHEREAS, The present condition of said works is such as to require the expenditure of a considerable amount of money for the purpose of repairing them so as to prevent overflows, and great consequent injury to said public works, and to the property of private citizens, and to put said public works in condition for use at the opening of navigation, or as soon thereafter as possible; therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That there is hereby appropriated out of the general

Appropriation for repair of public works.

Amount to be used in providing dredge-boats, etc.

Payments from receipts for tolls.

If works leased, property to be sold.

By whom money to be expended.

Lessees not hereby released.

revenue fund, the sum of thirty thousand dollars for the purpose of putting said works in such a state of repair as will prevent an overflow and render them fit for use at the opening of navigation, or as soon thereafter as possible; provided, that not exceeding twenty thousand dollars of said sum may be used in leasing or purchasing the necessary dredge and other boats, implements, tools, horses, and mules, required to keep said works in repair; and out of the receipts on account of tolls, fines, and water rents of the public works, the board may draw from the treasury and use an additional amount of money necessary to keep the public works in repair; and to pay the salaries of superintendents, collectors, lock-tenders, and other employés. In case the board should lease the public works, any property authorized to be purchased hereby, may be sold in the manner heretofore provided by law.

SEC. 2. The money hereby appropriated shall be expended by and under the direction of the state board of public works, for the purposes herein named, and no other.

SEC. 3. Neither this act of the general assembly, nor the acts of the board of public works, or any officer acting hereunder, shall be construed to be a release of the lessees from any of their obligations to the state, under said original lease and the extension thereof.

SEC. 4 This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed M y 13, 1878.

[House Bill No. 554.]

AN ACT

To provide for the payment of certain expenses incurred by investigating committees of the House and Senate.

WHEREAS, There were certain investigating committees appointed by the house and senate, which have incurred expenses now remaining unpaid, and unprovided for in the appropriation bill: therefore,

Appropriation for expenses of legislative committees.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That there is hereby appropriated out of any money in the treasury belonging to the general revenue fund, not otherwise appropriated, the sum of five hundred and seventy-eight dollars ($578.00), for the payment of expenses incurred by investigating committees appointed by the house and senate of the sixty-third general assembly of Ohio.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 14, 1878.

[House Bill No. 533.]

AN ACT

To provide for the control and maintenance of libraries in certain cities, which at the last federal census had, and which at any subsequent federal census may have, a population of ten thousand five hundred and ninety-two.

Consolidation of libraries in certain cities.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That in all cities which at the last federal census had, or at any subsequent federal census may have, a population of ten thousand five hundred and ninety-two, it shall be lawful to merge any public library therein heretofore established, with any other library or reading-room therein existing; provided, that the library found by such consolidation shall be kept open for the use of the public at all reasonable hours.

Support and control of consolidated libraries.

SEC. 2. Such libraries shall be supported and maintained by a levy of a tax of one-tenth of one mill on each dollar of valuation, as provided in the first section of an act passed by the general assembly of the state of Ohio, passed March 18, 1867 (Sayler's statutes, p. 11981), and shall be under the control of a committee of not less than three nor more than five citizens of any such city; which committee shall have power to make and enforce all necessary rules and regulations for the government of such library, and to take charge and control of all such books as may hereafter be purchased by the board of education of any such city, under the provisions of the second section of the act hereinbefore referred to.

SEC. 3. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 14, 1878.

[Senate Bill No. 94.]

AN ACT

For the better organization and management of the Imbecile Asylum.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the institution for the education of idiotic and

Board of trustees—appointment, term, and vacancies.

imbecile youth shall be under the control and management of a board of three trustees, who shall within ten days after the passage of this act be appointed by the governor by and with the advice and consent of the senate, one to serve one year, one to serve two years, and one to serve three years. And, at the expiration of their respective terms, their successors shall be appointed in the same manner for three years, one to be appointed each year; and a vacancy occurring in any other way than by expiration of term, shall be filled in the same manner for the unexpired term of the trustee whose place is vacant; if, when any vacancy occurs the senate is not in session, the governor shall fill the same by appointment; and if the term of appointment has not expired when the senate next convenes, the appointment shall be submitted to the senate for confirmation. [54 v. 190, secs. 1, 2; S. and C. 188.]

Organization of board; compensation and duties of secretary.

SEC. 2. The board at its first meeting and annually thereafter, shall organize by appointing one of their number president, and shall appoint a secretary who shall receive an annual salary to be fixed by the trustees, and shall have his board, and lodge in the institution. He shall act under the superintendent, and as his assistant shall keep the books of the institution, and shall make a faithful entry of all its transactions, also keep a complete record of all the proceedings and orders of the board, and discharge such other duties as shall be assigned him by the superintendent or trustees; he shall be subject to removal at the pleasure of the board.

Board to establish rules.

SEC. 3. The board shall establish such rules and regulations as may be deemed expedient for the government and management of the institution, and for securing economy and accountability in all its affairs, and all officers and employés shall strictly observe such rules and regulations, which may be changed at the pleasure of the board. [54 v. 19, sec. 2; S. and C. 188.]

Superintendent—his appointment, bond, etc.

SEC. 4. The board shall appoint a superintendent who shall, before entering upon the discharge of his duties, give bond to the state of Ohio in the sum of twenty thousand dollars, with sureties to the satisfaction of the board of trustees for the faithful performance of his duties; he shall have the management of the institution, subject to the board, and in accordance with the rules and regulations by them established. They shall, on the nomination of the superintendent, appoint a matron, and the board may remove either of them for cause. All teachers and other employés shall be appointed and may be discharged by the superintendent, or by the board. [54 v. 190, sec. 4; S. and C. 188.]

Matron, teachers, and employés—appointment and removal.

Admission of pupils, and their expenses.

SEC. 5. All imbecile and idiotic youth, who have been residents of the state for one year, and are not over fifteen years of age, and who are incapable of receiving instruction in the common schools, shall be received into the asylum, and maintained and educated at the expense of the state; but the expenses of clothing and traveling shall be paid by

the parents or parties sending them, if such parents or parties are able to pay the same; otherwise, these expenses shall also be borne by the state. [54 v. 190, sec. 6; S. and C. 188; 55 v. 67, sec. 7; S. and C. 189; 68 v. 136, sec. 1.]

Rules governing admission to be published, etc.

SEC. 6. The board shall prescribe and publish instructions and forms for the admission of pupils, and may include in them such interrogatories as they shall think necessary or useful to have answered; which instructions and forms shall be furnished to any persons applying therefor, and shall be sent in sufficient numbers to the probate judges in the several counties. [54 v. 190, sec. 6; S. and C. 188.]

Admission of non-residents and others.

SEC. 7. If the capacity of the institution allows the reception of pupils besides those above described, the trustees may admit persons of greater age, and persons not resident in the state; but for all who are not residents of the state for the required time, the trustees shall charge and receive for the institution a fair rate of compensation, to be fixed by the trustees. [55 v. 67, sec. 7; S. and C. 189; 68 v. 136, sec. 1.]

Training and education of inmates.

SEC. 8. The object aimed at in the institution shall be such training and educating of those received, as to render them more comfortable, happy, and better fitted to care for and support themselves. To this end the trustees shall furnish to them such agricultural and mechanical education as they may be capable of receiving, and as the facilities furnished by the state will allow, including shops and employment of teachers of trades who may at any time be discharged for cause.

Contracts for supplies, and how made.

SEC. 9. The trustees shall, whenever in their opinion the interests of the state would be subserved thereby, advertise for sealed bids to furnish to the institution any article or articles of supply, at such times and in such quantities as the superintendent may, from time to time, direct, each bid to be accompanied with a bond in such amount as may be fixed, and with sureties acceptable to the board that the bidder, if his bid be accepted, will faithfully perform his contract; all such contracts shall be awarded to the lowest bidder, if any bid be accepted, but the board shall in every case reserve the right to reject all bids; but no such contract shall be for a longer period than one year.

Annual report of trustees.

SEC. 10. The trustees shall, annually, make to the governor a report of their official proceedings for the year ending on the fifteenth day of November preceding, and of the condition and progress of the institution, together with an exhibit in detail of receipts and expenditures. [54 v. 190, sec. 9; S. and C. 188.]

Annual report of superintendent.

SEC. 11. The superintendent shall, annually, after the close of the fiscal year, and before the trustees make their annual report, make to the trustees a report, giving the name, age, sex, and date of reception, of each pupil in the institution within the preceding year, and the average number in attendance during the year, and as far as can be ascertained the causes of imbecility; the number discharged, with the

date and reason of discharge in each case, and also the names of all paying pupils, and the amounts charged for them, and the amount paid or unpaid; and also such other information and suggestions as to him may seem proper; which report shall be sent in by the trustees with their annual report. [68 v. 136, sec. 1.]

Visitations of asylum.

SEC. 12. There shall be visitations and thorough examinations of all parts of the institution monthly by one or more of said trustees, and quarterly by a majority of the same, and there shall be drawn and placed on record a detailed statement of the condition of the institution, which record shall at all times be open to the inspection of the committee of the legislature on benevolent institutions.

Examination of accounts, etc.

The trustees during their monthly visitations shall examine the books and accounts, and before any accounts or claims are paid, the same shall be examined and certified by at least two of the trustees.

Advancement of money for current expenses.

SEC. 13. The superintendent may, from time to time, draw from the state treasury, for current expenses, on the order of the trustees, or two of them, two thousand dollars; but no order shall be drawn for this purpose until the amount before drawn is fully accounted for, and the trustees drawing the same are satisfied that additional funds are needed for current expenses.

Trustees to be paid only expenses.

SEC. 14. The trustees shall receive no compensation for their services, but shall be entitled to receive their necessary expenses in attending to the business of the institution.

SEC. 15. The act of April 17, 1857, entitled "an act to establish an asylum for the education of idiotic and imbecile youth," (54 v. 190; S. & C. 188), and the act of April 12, 1858, entitled "an act to amend the seventh section of the act entitled an act to establish an asylum for the education of idiotic and imbecile youth," passed April 17, 1857, (55 v. 67; S. & C. 189), are hereby repealed.

SEC. 16. This act shall take effect from its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 14, 1878.

[House Bill No. 112.

AN ACT

To amend section fifteen of the act entitled "an act to create a board of public works in certain cities having a population of one hundred and fifty thousand and upwards at the last federal census," passed March 17, 1876, and section three hundred and forty-four of the act entitled "an act to provide for the organization and government of municipal corporations," passed May 7, 1869, as amended January 22, 1873.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That section fifteen of the act entitled "an act to create a board of public works in certain cities having a population of one hundred and fifty thousand and upwards at the last federal census," passed March 17, 1876, be and the same is hereby amended so as to read as follows:

Cincinnati water-works under control of board of public works.

Section 15. The revenues of the water-works shall hereafter be expended by and under control of said board, and contracts for water-works purposes shall be made by it only, and from said revenues it shall be the duty of the board to pay all interest upon any bonds heretofore or hereafter issued by the city for water-works purposes, after the expenditure of the amount raised by the current levy of taxes to pay interest upon such bonds.

SEC. 2. That section three hundred and forty-four of the act entitled "an act to provide for the organization and government of municipal corporations," passed May 7, 1869, as amended January 22, 1873, be and the same is hereby amended so as to read as follows:

No charge for water for certain purposes in any municipality having water-works.

Section 344. No charge shall be made by the trustees of water-works, or other board in control thereof, for supplying water for the extinguishing of fires or cleaning of fire apparatus, or for furnishing and supplying connections and fire hydrants, and keeping the same in repair for fire department purposes, or the cleaning of market-houses, or for the use of any public buildings or fountains belonging to the corporation, or for any hospital, asylum, or other public charitable institution devoted to the relief of the poor, the aged, infirm, or destitute persons, or orphan children.

SEC. 3. That the above named original sections fifteen and three hundred and forty-four be and the same are hereby repealed.

SEC. 4. This act shall take effect and be in force from and after the date of its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 14, 1878.

[House Bill No. 370.]

AN ACT

Supplementary to the acts entitled "an act to amend an act entitled 'an act to regulate the election of state and county officers,'" passed May 3, 1852, passed April 2, 1870, (vol. 67, page 47), and "an act supplementary to an act for the incorporation of townships," passed April 29, 1872, (vol. 69, page 202.)

Township election precincts, and elections therein.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That each township, exclusive of the territory embraced within the limits of a municipal corporation which is divided into wards, shall compose an election precinct, unless such township alone, or with other territory, is divided according to law into precincts; and when the election of township, county, and state officers, or any two of them, takes place upon the same day, such election shall be held in such precinct by the same judges and clerks of election, and the names of the candidates for each of such offices shall be upon the same ballot.

Municipal election precincts, and elections therein.

SEC. 2. Each ward of a municipal corporation shall compose one election precinct, unless such ward is divided according to law into precincts; and when the election of state, county, municipal, and township officers, or any two of them, takes place upon the same day, such election shall be held at such voting precinct by the same judges and clerks of election, and upon the same ballot, except that in a municipal corporation the limits of which are not coincident with the limits of the township there may be separate ballots and ballot-box for the municipal officers, and separate judges and clerks of election for same.

SEC. 3. This act shall be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 14, 1878.

[House Bill No. 403.]

AN ACT

Making appropriations for the fiscal year 1878, and the first quarter of the fiscal year 1879.

Appropriations for 1878, and first quarter of 1879.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That in addition to the appropriation made for the year 1878, there is hereby appropriated for the year 1878, and the first quarter of the year 1879, out of any moneys in the treasury belonging to the general revenue fund, not otherwise appropriated, the following sums, to wit:

For State Board of Agriculture:

State board of agriculture.

Encouragement of Agriculture, three thousand dollars. $3,000.00.

Contingent expenses, to be paid upon vouchers approved by the auditor and filed in his office, five hundred dollars. $500.00.

Horticultural society, to be paid to the president thereof, upon vouchers to be approved by the auditor and filed in his office, five hundred dollars. $500.00.

For Board of Public Works:

Board of public works.

Salaries of members, eighteen hundred dollars. $1.800 00.

Salaries of resident engineers, twenty-seven hundred dollars. $2,700 00.

Salary of clerk of board, nine hundred dollars. $900.00.

Attorney's fees and incidental expenses, two hundred and twenty-five dollars. $225.00.

There is hereby appropriated for the superintendence and repairs of the Western Reserve and Maumee road, whatever money may be collected and paid into the state treasury, to the credit of said road, between the 15th day of February, 1878, and the 15th day of February, 1879.

For Adjutant-General's Office:

Adjutant-general.

Salary of adjutant-general, fifteen hundred dollars. $1,500.00.

Salary of assistant adjutant-general, eleven hundred and twenty-five dollars. $1,125.00.

Salary of one clerk, ten hundred and thirteen dollars. $1,013.00.

Superintendent of state arsenal, who shall also discharge the duties of ordnance clerk, nine hundred dollars. $900.00.

Salary of two clerks to transcribe muster-rolls for one year, two thousand dollars. $2,000.00.

Labor at state arsenal and care of arms, six hundred dollars. $600 00.

Contingent expenses, seven hundred dollars. $700.00.

Expenses of batteries (vol. 73, page 179), six hundred dollars. $600.00.

Expenses of military companies (vol. 74, page 235), ten thousand dollars. $10,000 00.

Allowance for uniforms for Ohio National Guard, forty thousand dollars. $40,000.00.

For expenses of courts-martial, five hundred dollars. $500.00.

Expenses Ohio National Guard while in camp, thirty thousand dollars. $30,000.00.

For Adjutant-General—Capitol:

State house and grounds.

Care of capitol and grounds, two thousand dollars. $2,000.00.

Wages of employés, forty-five hundred dollars. $4,500.00.

For night watch of state-house and grounds, to be appointed by the treasurer, six hundred dollars. $600.00.

Fuel, one thousand dollars. $1,000.00.

Heating apparatus, twelve hundred dollars. $1,200.00.

Policeman, five hundred dollars. $500.00.

Water rent, seven hundred and seventy-five dollars. $775.00.

For the better ventilation of state-house, one thousand and four hundred dollars. $1,400.00

For Attorney-General:

Attorney-general.

Salary of clerk, four hundred and fifty dollars. $450.00.

For contingent expenses, two hundred dollars. $200.00.

For Auditor of State:

Auditor of state.

Salary of chief clerk, fifteen hundred dollars. $1,500.00.

Salary of book-keeper, eleven hundred and seventy-five dollars. $1,175.00.

Salary of land clerk, ten hundred and twenty-five dollars. $1,025.00.

Salary of general account and miscellaneous clerk, one thousand dollars. $1,000.00.

Salary of trust funds clerk, one thousand dollars. $1,000.00.

Salary of statistical, bank, and railroad clerk, eleven hundred and twenty-five dollars. $1,125.00.

Contingent expenses, fifteen hundred dollars. $1,500.00.

File cases, one hundred dollars. $100.00.

For Commissioner of Fisheries:

Commission of fisheries.

Expenses, three thousand dollars. $3,000.00.

For Commissioner of Railroads and Telegraphs:

Railroad commissioner.

Salary of one clerk, nine hundred dollars. $900.00.

Contingent expenses, two hundred dollars. $200.00.

Payment of experts to examine railroad bridges, to be paid on vouchers, endorsed by commissioner, eight hundred dollars. $800.00.

For Commissioner of State Common Schools:

School commissioner.

Salaries of clerks, two thousand and eighty-eight dollars. $2,088.00.

Contingent expenses, five hundred and fifty dollars. $550.00.

Traveling expenses, five hundred dollars. $500.00.

For Commission to Revise and Consolidate the Statutes:

Codifying commission.

Salaries of members, sixty-nine hundred dollars. $6,900.00.
Salaries of clerks, forty-six hundred dollars. $4 600.00.
Contingent expenses, two hundred dollars. $200.00.

For Governor's Office:

Governor.

Salary of executive clerk, eleven hundred and twenty-five dollars. $1,125.00.
Contingent expenses, fifteen hundred dollars. $1,500.00.
For portrait of Thomas L. Young, for governor's office, five hundred dollars. $500.00.

For Insurance Department:

Insurance department.

Salary of chief clerk for one year, seventeen hundred and fifty dollars. $1,750.00.
Salary of assistant clerk for one year, twelve hundred dollars. $1,200.00.
Temporary clerk hire, one thousand dollars. $1,000.00.
Contingent expenses, five hundred dollars. $500.00.

For Judiciary:

Judiciary.

Salaries of supreme, superior, and common pleas judges, one hundred and twenty-five thousand dollars. $125,000.00.

For the Legislature:

Legislature.

Per diem and mileage of members of the general assembly, and per diem of clerks, assistant clerks, sergeant-at-arms, and payment of messengers, pages, and other employés, under the laws and resolutions of the senate and house, eighty-five thousand dollars. $85,000,00.
Contingent expenses of the two houses, eight hundred dollars. $800.00.
Contingent expenses of clerk of house, after adjournment, fifty dollars. $50.00.
Contingent expenses of clerk of senate, after adjournment twenty-five dollars. $25.00.

Law Library:

Law library.

Books, six hundred dollars. $600.00.
Salary of assistant librarian and messenger of supreme court, for one year, one thousand dollars. $1,000.00.
Salary of messenger and attendants of commission to aid supreme court, for one year, eight hundred and fifty dollars. $850.00.
Grate and mantel, one hundred dollars. $100.00.
Carpet for room, one hundred and twenty dollars. $120.00.

For State Library:

State library. Books, thirteen hundred dollars. $1,300.00.

Salary of assistant librarian, seven hundred and fifty dollars. $750.00.

Contingent expenses, four hundred dollars. $400.00.

For Inspector of Mines:

Mine inspector. Salary, fifteen hundred dollars. $1,500.00.

Contingent and traveling expenses, six hundred dollars. $600 00.

For attorney's fees, four hundred dollars. $400.00.

For Secretary of State:

Secretary of state. Salary of chief clerk, fifteen hundred dollars. $1,500.00.

Salary of statistical clerk, eleven hundred and twenty-five dollars. $1,125.00.

Salary of stationery clerk, ten hundred and thirteen dollars. $1,013.00.

Salary of corporation clerk, ten hundred and thirteen dollars. $1,013.00.

Salary of recording clerk, ten hundred and thirteen dollars. $1,013.00.

Contingent expenses, one thousand dollars. $1,000.00.

Stationery, twenty-eight thousand dollars. $28,000.00.

Distribution of laws, journals, and public documents, thirteen hundred dollars. $1,300.00.

Purchase Ohio state reports, seventeen hundred and fifty dollars. $1,750.00.

Repairs of room eighty-eight, two hundred and fifty dollars. $250.00.

For Supervisor of Public Printing:

Supervisor public printing. State printing, twenty-three thousand dollars. $23,000.00.

State binding, sixteen thousand dollars. $16,000.00.

For Supreme Court:

Supreme court. Salary of assistant clerk, ten hundred and thirteen dollars. $1,013.00.

Salary of reporter, including both supreme court and supreme court commission, to pay in full to February 15, 1879, thirteen hundred and fifty dollars. $1,350.00.

Contingent expenses, two hundred dollars. $200.00.

Contingent expenses of clerk, two hundred dollars. $200.00.

Contingent expenses of reporter, two hundred dollars. $200.00.

For Commission to aid Supreme Court:

Supreme court commission. Salaries, eleven thousand two hundred and fifty dollars. $11,250.00.

Salary of assistant clerk, to pay in full to February 15, 1879, nine hundred dollars. $900.00.

Salary of clerk, three hundred and seventy-five dollars. $375.00.

Contingent expenses of clerk, one hundred dollars. $100.00.

For Geological Survey:

Geological survey.

For publication of geological maps, to accompany third volume of survey, eleven thousand seven hundred and fifty dollars. (Reappropriated.)

For completing volume three, part two, of Palæontology, two thousand dollars. $2,000.00.

For publishing 20,000 copies of volume four Zoölogy and Botany, eight thousand dollars. $8,000.00.

For Salaries of State Officers:

State officers' salaries.

Salaries of governor, lieutenant-governor, auditor of state, secretary of state, treasurer of state, state commissioner of common schools, superintendent of insurance, attorney-general, clerk of supreme court, private secretary of the governor, commissioner of railroads and telegraphs, state librarian, law librarian, and supervisor of public printing and binding, eighteen thousand dollars. $18,000.00.

For Labor Statistics:

Labor statistics.

Salary of commissioner, fifteen hundred dollars. $1,500.00.

Contingent expenses, four hundred and twenty-five dollars. $425.00.

For Treasurer of State:

Treasurer of state.

Salary of cashier, fifteen hundred dollars. $1,500.00.

Salaries of two book-keepers, twenty hundred and twenty-five dollars. $2,025.00.

Contingent expenses, five hundred dollars. $500.00.

Night watch of the treasury, six hundred dollars. $600 00.

Mileage of county treasurers, thirty-four hundred dollars. $3,400.00.

Miscellaneous:

Miscellaneous.

David Benbow, painting and varnishing two rooms for codifying commissioners, deficiency, seventy-seven dollars and forty cents. $77.40.

George R. Otte & Co., balance on carpets, deficiency, thirty-six dollars and fifty-eight cents. $36.58.

For commission to improve the Ohio river, one thousand dollars. $1,000.00.

For furnishing senate committee room, "two hundred and eighty-four dollars and sixty cents." $284.60.

For carpet for house clerk's office, "one hundred and twenty-six dollars." $126.00.

For Alfred Buckingham, M.D., services and expenses as commissioner on hog cholera, "five hundred and eight dollars." $508.00.

SEC. 2. That there is hereby appropriated, out of any money in the treasury to the credit of the asylum fund, not otherwise appropriated, the following sums, to wit:

For the Athens Asylum for the Insane:

Athens asylum.

Current expenses, seventy-five thousand dollars. $75,000.00.
Salaries, thirty-three hundred dollars. $3,300.00.
Out-buildings, one thousand dollars. $1,000.00.
Grading, two thousand dollars. $2,000.00.
Ordinary repairs and painting walls, four thousand dollars. $4,000 00.
Library, two hundred dollars. $200.00.
Completing enlargement of water-works, five thousand dollars. $5,000.00.
Hose, eight hundred dollars. $800.00.
Veranda, seventeen hundred dollars. $1,700.00.

For the Cleveland Asylum for the Insane:

Cleveland asylum.

Current expenses, seventy thousand dollars. $70,000.00.
Salaries, thirty-seven hundred dollars. $3,700.00.
Library, two hundred dollars. $200.00.
Ordinary repairs and painting walls, five thousand dollars. $5,000.00.
For building green-house, twenty-five hundred dollars. $2,500.00.

For the Columbus Asylum for the Insane:

Columbus asylum.

Current expenses, one hundred and thirty thousand dollars. $130,000.00.
Salaries, forty-four hundred dollars. $4,400.00.
For extra pay to the superintendent for superintending the completion and furnishing of the asylum, one thousand dollars: provided that no pay shall be allowed by the trustees for the services of an architect during the remainder of the time for which this appropriation is made. $1,000.00.
Library, four hundred dollars. $400.00.
Grading and fencing, eight thousand dollars. $8,000.00.
Screens for basement, two thousand dollars. $2,000.00.
Organ, one thousand dollars. $1,000 00.
Purchase of stock cows, two thousand dollars. $2,000.00.
Ordinary rspairs, two thousand dollars. $2,000 00.
Fitting up store-room, five hundred dollars. $500.00.
Airing court for women, four thousand dollars. $4,000.00.
For purchase of land for water supply, three hundred and fifty dollars. $350.00.
Right of way for, and shortening sewer, five hundred dollars. $500.00.

Completing and furnishing barn, five hundred dollars. $500.00.

For Dayton Asylum for the Insane:

Dayton asylum.

Current expenses, fifty thousand dollars. $50,000.00.
Salaries, thirty hundred dollars. $3,000.00.
Ordinary repairs and painting outside wall of main building, twenty-five hundred dollars. $2,500.00
Library, two hundred dollars. $200.00.

For the Asylum for the Deaf and Dumb:

Deaf and dumb asylum.

Current expenses, forty-five thousand dollars. $45,000.00.
Salaries, fourteen thousand two hundred and fifty-seven dollars. $14,257.00.
Ordinary repairs and painting, forty-five hundred dollars. $1,500.00.
Printing department, twelve hundred dollars. $1,200.00.

For Longview Asylum:

Longview asylum.

A sum to be ascertained by the auditor of state, which shall bear the same proportion to the apropriations for the other asylums for the insane of the state, as the population of Hamilton county bears to the population of the state, exclusive of said county, as appears by the federal census of 1870.

For the support of the colored insane, in accordance with the terms of agreement with the state, two thousand dollars. $2,000.00.

For the Lucas County Asylum for the Insane:

Lucas county asylum.

To support patients, under contract authorized by joint resolution adopted, fifteen thousand dollars. $15,000.00.

For Asylum for Imbecile Youth:

Imbecile asylum.

Current expenses, forty-five thousand dollars. $45,000.00.
Salaries, seven thousand seven hundred dollars. $7,700.00.
Ordinary repairs, two thousand dollars. $2,000 00.
Building barn, four thousand dollars. $4,000.00.
Extending heating apparatus and repair of boilers, two thousand dollars. $2,000.00.
New wings or new building, forty thousand dollars. $40,000.00.

For Blind Asylum:

Blind asylum.

Current expenses, twenty-one thousand dollars. $21,000.00.
Salaries, seven thousand dollars. $7,000.00.
Ordinary repairs, ten hundred dollars. $1,000.00.
Walks, and improving grounds, one thousand dollars. $1,000.00.

For Reform Farm School:

Reform farm.

Current expenses, forty thousand dollars. $40,000.00.
Salaries, twelve thousand dollars. $12,000.00.
For bakery, laundry, and ordinary repairs, six thousand dollars. $6,000 00.

For Girls' Industrial Home:

Girls' industrial home.

Current expenses, fourteen thousand dollars. $14,000.00.
Salaries, forty-five hundred dollars. $4,500.00.
Ordinary repairs, five hundred dollars. $500.00.
Gas works, three thousand dollars. $3,000.00.

For Ohio Penitentiary:

Penitentiary.

Current expenses, one hundred thousand dollars. $100,000.00.
Salaries of directors, twenty-five hundred dollars. $2,500.00.
Salary of warden, deputy warden, clerk, assistant clerk, physician, steward, chaplain, captain of night watch, officers of guard-room, superintendents of hospital, kitchen, yard, and state shop, fourteen thousand six hundred dollars. $14,600.00.
Guards, fifty thousand dollars. $50,000.00.
Manufacture of gas, three thousand dollars. $3,000 00.
Enlargement and repairs, five thousand dollars. $5,000.00.
Library, five hundred dollars. $500.00.
New roof, thirty-eight thousand six hundred and forty dollars. $38,640.00.
Rewards to convicts, one thousand dollars. $1,000.00.
New cells, eight thousand eight hundred and eighty-two dollars. $8,882.00.
Prosecution and transportation of convicts, seventy thousand dollars. $70,000.00.
For work-shops, ten thousand dollars. $10,000 00.
For grist-mill and wash-house, four thousand three hundred and thirty-three dollars. $4,333.00.

For Ohio Soldiers' and Sailors' Orphans' Home:

Soldiers' orphans' home.

Current expenses, forty-five thousand dollars. $45,000.00.
Salaries, eight thousand dollars. $8,000.00.
Ordinary repairs, one thousand dollars. $1,000.00.
Support of orphans, outside of home, four thousand dollars. $4,000.00.

For Toledo House of Refuge and Correction.

Toledo house of correction.

For support of boys, in pursuance of joint resolution adopted, eighteen thousand dollars. $18,000.00.
"Provided, that the attorney general may require the transfer of the inmates to the Ohio reform school, when there is room, and when such transfer is made, the unexpended bal-

ance of said $18,000 shall be placed to the credit of the Ohio reform school."

For Trustees of Benevolent Institutions:

Trustees of benevolent institutions.

Necessary expenses of the trustees of the various benevolent institutions, seven hundred dollars. $700.00

Hershiser, Adams & Co.

For Hershiser, Adams & Co., balance on contract and extra work at Columbus asylum, eight hundred and seventy-nine dollars and twenty-eight cents. $879.28.

STATE COMMON SCHOOLS.

Common school fund.

SEC. 3. There is hereby appropriated from any moneys raised, or accruing to the state treasury, for the support of common schools, one million five hundred thousand dollars, or as much as may come into the state treasury for this purpose, to be distributed and paid in the manner provided by law. $1,500,000.00

Interest on public debt.

SEC. 4. There is hereby appropriated from any money in the treasury, by transfer or otherwise, and that may come into the treasury belonging to the sinking fund, for the payment of interest on the foreign and domestic debt of the state, three hundred and eighty-eight thousand three hundred and and fifty-eight dollars. $388,358.00

Irreducible debt.

For interest on school, ministerial and trust funds, which constitute the irreducible debt of the state, two hundred and fifty-four thousand seven hundred and sixty-five dollars. $254,765.00

Sinking fund office.

To pay the expenses of the office of commissioners of the sinking fund, including salary of clerk, fifteen hundred dollars. $1,500.00.

No deficiencies to be created.

SEC. 5. No deficiencies shall be created in any of the public institutions of the state, excepting only for necessary current expenses; and no deficiency whatever shall be created on account of grading, improving or repairing, painting, furnishing, fencing, paving, salaries, or compensation, or on any other account whatever, in any of said institutions, unless such repairs are necessary to the preservation of such building and the fixtures thereto, and the protection of the inmates. No compensation shall be paid, allowed, or promised to any clerk or other employé beyond the amounts herein specifically appropriated for such purpose, except where such compensation is fixed by a general law; nor shall any repairs be made or expenses incurred, whatever, exceeding the amounts herein appropriated for such purposes, except as above provided.

SEC. 6. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 14, 1878.

Board of trustees—appointment, term, and vacancies.

imbecile youth shall be under the control and management of a board of three trustees, who shall within ten days after the passage of this act be appointed by the governor by and with the advice and consent of the senate, one to serve one year, one to serve two years, and one to serve three years. And, at the expiration of their respective terms, their successors shall be appointed in the same manner for three years, one to be appointed each year; and a vacancy occurring in any other way than by expiration of term, shall be filled in the same manner for the unexpired term of the trustee whose place is vacant; if, when any vacancy occurs the senate is not in session, the governor shall fill the same by appointment; and if the term of appointment has not expired when the senate next convenes, the appointment shall be submitted to the senate for confirmation. [54 v. 190, secs. 1, 2; S. and C. 188.]

Organization of board; compensation and duties of secretary.

SEC. 2. The board at its first meeting and annually thereafter, shall organize by appointing one of their number president, and shall appoint a secretary who shall receive an annual salary to be fixed by the trustees, and shall have his board, and lodge in the institution. He shall act under the superintendent, and as his assistant shall keep the books of the institution, and shall make a faithful entry of all its transactions, also keep a complete record of all the proceedings and orders of the board, and discharge such other duties as shall be assigned him by the superintendent or trustees; he shall be subject to removal at the pleasure of the board.

Board to establish rules.

SEC. 3. The board shall establish such rules and regulations as may be deemed expedient for the government and management of the institution, and for securing economy and accountability in all its affairs, and all officers and employés shall strictly observe such rules and regulations, which may be changed at the pleasure of the board. [54 v. 19, sec. 2; S. and C. 188.]

Superintendent—his appointment, bond, etc.

SEC. 4. The board shall appoint a superintendent who shall, before entering upon the discharge of his duties, give bond to the state of Ohio in the sum of twenty thousand dollars, with sureties to the satisfaction of the board of trustees for the faithful performance of his duties; he shall have the management of the institution, subject to the board, and in accordance with the rules and regulations by them established. They shall, on the nomination of the superintendent, appoint a matron, and the board may remove either of them for cause. All teachers and other employés shall be appointed and may be discharged by the superintendent, or by the board. [54 v. 190, sec. 4; S. and C. 188.]

Matron, teachers, and employés—appointment and removal.

Admission of pupils, and their expenses.

SEC. 5. All imbecile and idiotic youth, who have been residents of the state for one year, and are not over fifteen years of age, and who are incapable of receiving instruction in the common schools, shall be received into the asylum, and maintained and educated at the expense of the state; but the expenses of clothing and traveling shall be paid by

the parents or parties sending them, if such parents or parties are able to pay the same; otherwise, these expenses shall also be borne by the state. [54 v. 190, sec. 6; S. and C. 188; 55 v. 67, sec. 7; S. and C. 189; 68 v. 136, sec. 1.]

Rules governing admission to be published, etc.

SEC. 6. The board shall prescribe and publish instructions and forms for the admission of pupils, and may include in them such interrogatories as they shall think necessary or useful to have answered; which instructions and forms shall be furnished to any persons applying therefor, and shall be sent in sufficient numbers to the probate judges in the several counties. [54 v. 190, sec. 6; S. and C. 188.]

Admission of non-residents and others.

SEC. 7. If the capacity of the institution allows the reception of pupils besides those above described, the trustees may admit persons of greater age, and persons not resident in the state; but for all who are not residents of the state for the required time, the trustees shall charge and receive for the institution a fair rate of compensation, to be fixed by the trustees. [55 v. 67, sec. 7; S. and C. 189; 68 v. 136, sec. 1.]

Training and education of inmates.

SEC. 8. The object aimed at in the institution shall be such training and educating of those received, as to render them more comfortable, happy, and better fitted to care for and support themselves. To this end the trustees shall furnish to them such agricultural and mechanical education as they may be capable of receiving, and as the facilities furnished by the state will allow, including shops and employment of teachers of trades who may at any time be discharged for cause.

Contracts for supplies, and how made.

SEC. 9. The trustees shall, whenever in their opinion the interests of the state would be subserved thereby, advertise for sealed bids to furnish to the institution any article or articles of supply, at such times and in such quantities as the superintendent may, from time to time, direct, each bid to be accompanied with a bond in such amount as may be fixed, and with sureties acceptable to the board that the bidder, if his bid be accepted, will faithfully perform his contract; all such contracts shall be awarded to the lowest bidder, if any bid be accepted, but the board shall in every case reserve the right to reject all bids; but no such contract shall be for a longer period than one year.

Annual report of trustees.

SEC. 10. The trustees shall, annually, make to the governor a report of their official proceedings for the year ending on the fifteenth day of November preceding, and of the condition and progress of the institution, together with an exhibit in detail of receipts and expenditures. [54 v. 190, sec. 9; S. and C. 188.]

Annual report of superintendent.

SEC. 11. The superintendent shall, annually, after the close of the fiscal year, and before the trustees make their annual report, make to the trustees a report, giving the name, age, sex, and date of reception, of each pupil in the institution within the preceding year, and the average number in attendance during the year, and as far as can be ascertained the causes of imbecility; the number discharged, with the

date and reason of discharge in each case, and also the names of all paying pupils, and the amounts charged for them, and the amount paid or unpaid; and also such other information and suggestions as to him may seem proper; which report shall be sent in by the trustees with their annual report. [68 v. 136, sec. 1.]

Visitations of asylum.

SEC. 12. There shall be visitations and thorough examinations of all parts of the institution monthly by one or more of said trustees, and quarterly by a majority of the same, and there shall be drawn and placed on record a detailed statement of the condition of the institution, which record shall at all times be open to the inspection of the committee of the legislature on benevolent institutions.

Examination of accounts, etc.

The trustees during their monthly visitations shall examine the books and accounts, and before any accounts or claims are paid, the same shall be examined and certified by at least two of the trustees.

Advancement of money for current expenses.

SEC. 13. The superintendent may, from time to time, draw from the state treasury, for current expenses, on the order of the trustees, or two of them, two thousand dollars; but no order shall be drawn for this purpose until the amount before drawn is fully accounted for, and the trustees drawing the same are satisfied that additional funds are needed for current expenses.

Trustees to be paid only expenses.

SEC. 14. The trustees shall receive no compensation for their services, but shall be entitled to receive their necessary expenses in attending to the business of the institution.

SEC. 15. The act of April 17, 1857, entitled "an act to establish an asylum for the education of idiotic and imbecile youth," (54 v. 190; S. & C. 188), and the act of April 12, 1858, entitled "an act to amend the seventh section of the act entitled an act to establish an asylum for the education of idiotic and imbecile youth," passed April 17, 1857, (55 v. 67; S. & C. 189), are hereby repealed.

SEC. 16. This act shall take effect from its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 14, 1878.

[House Bill No. 112.

AN ACT

To amend section fifteen of the act entitled "an act to create a board of public works in certain cities having a population of one hundred and fifty thousand and upwards at the last federal census," passed March 17, 1876, and section three hundred and forty-four of the act entitled "an act to provide for the organization and government of municipal corporations," passed May 7, 1869, as amended January 22, 1873.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That section fifteen of the act entitled "an act to create a board of public works in certain cities having a population of one hundred and fifty thousand and upwards at the last federal census," passed March 17, 1876, be and the same is hereby amended so as to read as follows:

Cincinnati water-works under control of board of public works.

Section 15. The revenues of the water-works shall hereafter be expended by and under control of said board, and contracts for water-works purposes shall be made by it only, and from said revenues it shall be the duty of the board to pay all interest upon any bonds heretofore or hereafter issued by the city for water-works purposes, after the expenditure of the amount raised by the current levy of taxes to pay interest upon such bonds.

SEC. 2. That section three hundred and forty-four of the act entitled "an act to provide for the organization and government of municipal corporations," passed May 7, 1869, as amended January 22, 1873, be and the same is hereby amended so as to read as follows:

No charge for water for certain purposes in any municipality having water-works.

Section 344. No charge shall be made by the trustees of water-works, or other board in control thereof, for supplying water for the extinguishing of fires or cleaning of fire apparatus, or for furnishing and supplying connections and fire hydrants, and keeping the same in repair for fire department purposes, or the cleaning of market-houses, or for the use of any public buildings or fountains belonging to the corporation, or for any hospital, asylum, or other public charitable institution devoted to the relief of the poor, the aged, infirm, or destitute persons, or orphan children.

SEC. 3. That the above named original sections fifteen and three hundred and forty-four be and the same are hereby repealed.

SEC. 4. This act shall take effect and be in force from and after the date of its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 14, 1878.

[House Bill No. 370.]

AN ACT

Supplementary to the acts entitled "an act to amend an act entitled 'an act to regulate the election of state and county officers,'" passed May 3, 1852, passed April 2, 1870, (vol. 67, page 47), and "an act supplementary to an act for the incorporation of townships," passed April 29, 1872, (vol. 69, page 202.)

Township election precincts, and elections therein.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That each township, exclusive of the territory embraced within the limits of a municipal corporation which is divided into wards, shall compose an election precinct, unless such township alone, or with other territory, is divided according to law into precincts; and when the election of township, county, and state officers, or any two of them, takes place upon the same day, such election shall be held in such precinct by the same judges and clerks of election, and the names of the candidates for each of such offices shall be upon the same ballot.

Municipal election precincts, and elections therein.

SEC. 2. Each ward of a municipal corporation shall compose one election precinct, unless such ward is divided according to law into precincts; and when the election of state, county, municipal, and township officers, or any two of them, takes place upon the same day, such election shall be held at such voting precinct by the same judges and clerks of election, and upon the same ballot, except that in a municipal corporation the limits of which are not coincident with the limits of the township there may be separate ballots and ballot-box for the municipal officers, and separate judges and clerks of election for same.

SEC. 3. This act shall be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 14, 1878.

[House Bill No. 403.]

AN ACT

Making appropriations for the fiscal year 1878, and the first quarter of the fiscal year 1879.

Appropriations for 1878, and first quarter of 1879.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That in addition to the appropriation made for the year 1878, there is hereby appropriated for the year 1878, and the first quarter of the year 1879, out of any moneys in the treasury belonging to the general revenue fund, not otherwise appropriated, the following sums, to wit:

For State Board of Agriculture:

State board of agriculture.

Encouragement of Agriculture, three thousand dollars. $3,000.00.

Contingent expenses, to be paid upon vouchers approved by the auditor and filed in his office, five hundred dollars. $500.00.

Horticultural society, to be paid to the president thereof, upon vouchers to be approved by the auditor and filed in his office, five hundred dollars. $500.00.

For Board of Public Works:

Board of public works.

Salaries of members, eighteen hundred dollars. $1.800 00.

Salaries of resident engineers, twenty-seven hundred dollars. $2,700 00.

Salary of clerk of board, nine hundred dollars. $900.00.

Attorney's fees and incidental expenses, two hundred and twenty-five dollars. $225.00.

There is hereby appropriated for the superintendence and repairs of the Western Reserve and Maumee road, whatever money may be collected and paid into the state treasury, to the credit of said road, between the 15th day of February, 1878, and the 15th day of February, 1879.

For Adjutant-General's Office:

Adjutant-general.

Salary of adjutant-general, fifteen hundred dollars. $1,500.00.

Salary of assistant adjutant-general, eleven hundred and twenty-five dollars. $1,125.00.

Salary of one clerk, ten hundred and thirteen dollars. $1,013.00.

Superintendent of state arsenal, who shall also discharge the duties of ordnance clerk, nine hundred dollars. $900.00.

Salary of two clerks to transcribe muster-rolls for one year, two thousand dollars. $2,000.00.

Labor at state arsenal and care of arms, six hundred dollars. $600 00.

Contingent expenses, seven hundred dollars. $700.00.

Expenses of batteries (vol. 73, page 179), six hundred dollars. $600.00.

Expenses of military companies (vol. 74, page 235), ten thousand dollars. $10,000 00.

Allowance for uniforms for Ohio National Guard, forty thousand dollars. $40,000.00.

For expenses of courts-martial, five hundred dollars. $500.00.

Expenses Ohio National Guard while in camp, thirty thousand dollars. $30,000.00.

SEC. 3. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 15, 1878.

[Sub. for Senate Bill No. 40.]

AN ACT

To amend section seven of chapter two, title two, code of criminal procedure. (O. L., v. 74, p. 289.)

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That said section seven be so amended as to read as follows:

Obtaining property or signature by false pretense, etc.

Section 7. Whoever, by any false pretense, with intent to defraud, obtains from any person anything of value, or procures the signature of any person, as maker, indorser, or guarantor thereof, to any bond, bill, receipt, promissory note, draft, or check, or any other evidence of indebtedness, and whoever shall sell, barter, or dispose of, or offer to sell, barter, or dispose of, any bond, bill, receipt, promissory note, draft, or check, knowing the signature of the maker, indorser, or guarantor thereof to have been obtained by any false pretense as aforesaid, shall, if the value of the property is thirty-five dollars, or more, or if the note so procured, sold, bartered, or disposed of, or offered to be sold, bartered, or disposed of, shall call for the payment of thirty-five dollars, or more, be imprisoned in the penitentiary not more than three years, nor less than one year; or, if the value is less than that sum, or such note calls for an amount less than that sum, be fined not more than one hundred nor less than ten dollars, or imprisoned not more than sixty nor less than ten days, or both.

SEC. 2. That said section seven be and the same is hereby repealed; and this act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 15, 1878.

[House Bill No. 539.]

AN ACT

To admit women to the practice of law.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That no person shall be excluded from acting as an attorney-at law and practicing in all the courts of this state on account of sex.

SEC. 2. This act shall take effect and be in force immediately after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 15, 1878.

[House Bill No. 555.]

AN ACT

Providing for the prompt printing and distribution of the municipal code, and making additional appropriations for printing and distribution of the laws.

Printing of municipal code in advance, etc.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the secretary of state is hereby authorized and required to have the act entitled "an act to amend, revise, and consolidate the statutes relating to municipal corporations, to be known as title 12, part 1, of the act to consolidate the general statutes of Ohio," printed immediately as part of the forthcoming volume of laws, and when so printed, to have five thousand copies thereof stitched and bound in brochure and distributed to the several counties in proportion to their representatives in the most numerous branch of the general assembly; said copies to be forwarded to the auditors of the several counties, and the costs of distribution to be paid out of the fund for distribution of the laws and journals.

Appropriation for distribution of laws and for stationery.

SEC. 2. That in order to carry out the provisions of section one of this act, and also to provide for the extraordinary expense attending the publication of the forthcoming volume of the laws, there is hereby appropriated the following additional sums for the funds named below, to be expended under the direction of the secretary of state:

For distribution of laws and journals, three hundred dollars; for stationery, ten thousand dollars.

SEC. 3. This act shall take effect from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 15, 1878.

[Substitute for Senate Bill No. 137.]

AN ACT

To provide for the appointment of inspector and deputy inspector of mineral oils and other substances; to regulate the sale of the same for illuminating purposes, and to repeal certain acts therein named.

Inspection of petroleum oils, and the manner thereof.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That all mineral or petroleum oil, or any oil, fluid, or substance which is a product of petroleum, or into which petroleum or any product of petroleum enters or is found as a constituent element, whether manufactured within this state or not, shall be inspected, as provided in this act, before being offered for sale or sold for consumption for illuminating purposes within this state; and such inspection shall be conducted as herein provided, in the following manner, to wit:

The test shall be made in a test-cup of metal or glass, cylindrical in shape, two and a quarter inches in diameter, and four inches deep, both measurements being made inside the cup, and this cup shall be filled to within one quarter of an inch of the brim with the oil or other substance to be tested, taken at the ordinary temperature. The cup shall be placed in a water bath sufficiently large to leave a clear space of one inch under the cup, and three-eighths of an inch around it, and in such a manner as to project about one-quarter inch above the water-bath. The space between the cups and the water-bath shall be nearly filled with cold water, taken at the ordinary temperature, and the cup being placed in the water-bath, the latter shall be heated by an alcohol lamp, with its flame so graduated that the rise in temperature from sixty degrees Fahrenheit to the highest test temperature, shall not be less than two degrees per minute, and shall be as near two degrees per minute as is practicable, and shall in no case exceed four degrees per minute. A Fahrenheit thermometer shall be suspended in such a manner that the upper surface of its bulb shall be as near as practicable one-quarter of an inch below the surface of the oil undergoing test. As soon as the temperature reaches the point of ninety-eight degrees Fahrenheit, the lamp shall be removed from under the water-bath, and the oil shall then be allowed to rise to the temperature of one hundred degrees Fahrenheit, by the residual heat of the water, and at that point the first test for flash shall be made as follows: A taper, hereinafter described, shall be lighted and the surface of the oil shall be touched with the flame of the taper, and it shall be lawful to apply this flame, either to the center of the oil surface or to any or all parts of it, but the taper itself shall not be plunged into the oil, and if no flash takes place upon the first contact of the flame with the oil, the taper shall not be held in longer contact, but shall be immediately withdrawn. If no flash takes place at the temperature of one hundred degrees Fahrenheit, the lamp shall be replaced under the water-bath, and the temperature raised to one hundred and

three degrees, when the lamp shall be again withdrawn, and allowed to arise to one hundred and five degrees by the residual heat of the water, when the test shall be made at one hundred and five degrees by again applying the flame of the taper as hereinbefore specified. If no flash occurs, the test shall be repeated as often as the oil gains five degrees in temperature, three degrees with the lamp under the water-bath, and two degrees with the lamp removed. These tests shall be repeated until a flash is obtained. The inspector shall further test the oil by applying the taper at every two degrees rise, without removing the lamp or stirring, but if a flash is obtained by this means by a less rise in temperature than the five degrees herein required, he shall at once remove the lamp, stir the oil, and immediately apply the flame. The taper used for testing may be made of any wood giving a clear flame, and it shall be made as slender as possible, and with a tip not more than one sixteenth of an inch in thickness. No taper or match with sulphur upon it shall be used, unless the sulphur is removed before lighting. When the taper is lighted, it shall be applied to the oil immediately, that is to say, before an ash or coal has had time to form on the end of the taper beyond the flame, and in applying the taper the flame shall be made to touch the oil, but the taper itself shall not be brought in contact with the oil: provided, that if the taper is so brought in contact with the oil, but not held there longer than for the space of one second, and the oil flashes, the test shall not thereby be vitiated, but the inspector shall immediately remove the lamp, and again test the oil by the flame without allowing the body of the taper to touch the oil. No oil or other substance, which, by the test herein described, flashes at any temperature below one hundred and twenty degrees Fahrenheit, shall be allowed to be sold, or offered for sale, or consumed for illuminating purposes in this state: provided, however, that it shall be held and deemed to be a sufficient compliance with the provisions of this section, to test the oil or oils therein described by an apparatus known as the "Foster cup," or Foster's automatic oil tester, designed by James Foster, Jr. & Co., Cincinnati. And it shall be lawful to sell, for illuminating purposes, any oil or oils herein described, to be consumed within this state, which shall bear a flash test of one hundred and twenty degrees Fahrenheit, as shown by said apparatus; and the said state inspector is hereby authorized to substitute the test by the Foster cup, or Foster's automatic oil-tester, designed by James Foster, Jr., & Co., Cincinnati, instead of the test by the open cup, as herein provided, if, in his judgment, by such change a greater uniformity of test throughout the state will be secured.

Appointment of state inspector and deputies.

SEC. 2. That the governor of this state shall appoint a skilled, suitable person, by and with the advice and consent of the senate, a resident of this state, who is not interested in manufacturing, dealing, or vending any illuminating oils

manufactured from petroleum, as state inspector of oils, whose term of office shall be for two years from the date of his appointment, and until his successor shall be appointed and qualified. Such inspector when so appointed and qualified, is hereby empowered to appoint a suitable number of deputies, which deputies are hereby empowered to perform the duties of inspection, and shall be liable to the same penalties as the state inspector. And such state inspector may remove any of said deputies for reasonable cause, and appoint others in their place. It shall be the duty of such state inspector and his deputies to provide themselves, at their own expense, with the necessary instruments, and apparatus, and stencils, brands, and stamps for testing and marking the quality of said illuminating oils, and when called upon for that purpose, to promptly inspect all oils herein mentioned, and to reject, for illuminating purposes for consumption in this state, all oils, which by being adulterated with naphtha, benzine, parafine, or other light oils or other substance, or for any other reason, will not stand and be equal to the test herein prescribed. Such state inspector shall prepare the forms of all stencils, brands, and stamps provided for in this act, and also such general regulation rules for inspection, not inconsistent with the terms and provisions of this act, and such rules and regulations shall be binding on all deputy inspectors in this state. Such state inspector, or his deputies, are hereby required, and it is made their duty, to test the quality of all mineral or petroleum oils, or any oil, fluid, or substance which is a product of petroleum, or into which petroleum, or any product of petroleum, enters or is found as a constituent element, which is offered or intended to be offered for sale for illuminating purposes in this state; and if, upon such testing or examination, the same shall meet the requirements herein specified, the said inspector, or his deputies, shall affix, by stencil or brand, on any package, cask, or barrel containing the same, and by a stamp subscribed with his official signature the word "approved," with the date of such inspection; and it shall then be lawful for any manufacturer, vender, or dealer to sell the same, to be consumed within this state, as an illuminator; but if the oil so tested shall not meet such requirements, he shall mark by stencil or brand, in plain letters, on any package or barrel containing the same, and by a stamp, subscribed with his official signature, the words "rejected for illuminating purposes," giving the date of such inspection. And it shall be unlawful for the owner thereof to sell oil so branded as rejected, to be consumed within this state for illuminating purposes; and if any person shall sell or offer for sale such rejected oil he shall be deemed guilty of a misdemeanor, and shall be subject to a penalty in any sum not less than one thousand dollars, or be imprisoned in the county jail not exceeding twenty days, or both.

Their duties.

SEC. 3. Every person appointed state inspector, or deputy

inspector, shall, before he enters upon the discharge of the duties of his office, take an oath or affirmation prescribed by the constitution and laws of this state, and shall file the same in the office of the secretary of state. The state inspector shall execute a bond to the state of Ohio in the sum of twenty thousand dollars, with such surety as shall be approved by the secretary of state, conditioned for the faithful performance of the duties imposed upon him by this act, which bond shall be for the use of all persons in any way aggrieved or injured by the acts or neglect of said inspector, and the same shall be filed with the secretary of state. Said inspector shall be subject to removal by the governor for any violation or neglect of his duties as herein prescribed. The deputy inspector shall execute a bond to the state of Ohio in the sum of five thousand dollars, with such surety as shall be approved by the judge of probate of the county where said inspector is located, and file the same with the clerk of the court of common pleas in the county where the deputy inspector resides. Said inspector, or deputy inspector, shall be entitled to demand and receive from the owner or party calling on him, or for whom he shall perform the inspection, the sum of forty cents for a single barrel, package, or cask, twenty-five cents each when the lot does not exceed ten in number, fifteen cents each when the lot does not exceed twenty in number, ten cents each when the lot does not exceeed fifty in number, and five cents each for all lots exceeding fifty barrels. And all fees so accruing shall be a lien on the oil so inspected. It shall be the duty of every inspector, or deputy inspector, to keep a true and accurate record of all oils so inspected and branded by him, which record shall state the date of the inspection, number of barrels, and the name of the person for whom inspected, and such record shall be open to the inspection of any and all persons interested. And every deputy inspector shall, on the first Monday of each and every month, make a true and accurate return to the state inspector of all such inspections for the preceding month, giving the quantity inspected, the date of the inspection, and the name of the person for whom it is inspected. On the second Monday in January of each and every year, the state inspector shall make and deliver to the governor of the state of Ohio an annual report of the inspections by himself and deputies during the preceding calendar year.

Oath and bond of inspectors.

Their fees.

Record of inspection.

Reports.

SEC. 4. That if any person or persons, for themselves, or as agents for any person, shall sell, or attempt to sell to any person in this state, any such oils to be consumed within this state for illuminating purposes, whether manufactured in this state or not, before having the same inspected as provided in this act, he shall be deemed guilty of a misdemeanor, and shall be subject to a penalty, and upon conviction thereof shall be fined in any sum not less than one hundred and not exceeding three hundred dollars. And if

Sale of uninspected oil.

False brands, etc.

any person shall falsely brand any package, cask, or barrel, as provided in section one in this act, or shall refill and use any package, cask, or barrel having the inspector's brand thereon, without having the oil therein inspected, he shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be subject to a penalty, and shall be fined in any sum not exceeding five hundred dollars nor less than one hundred, or be imprisoned in the county jail not exceeding six months, or both, at the discretion of the court.

Use of uninspected oil.

SEC. 5. Any person who shall knowingly use, for illuminating purposes, any oil or products of petroleum before the same has been inspected and branded by the state inspector, or his deputy, as hereinafter provided, shall be guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding one hundred, nor less than twenty dollars for each offense.

Sale of empty branded casks.

SEC. 6. Any person selling or dealing in illuminating oils, produced from petroleum, who shall sell or dispose of any empty barrel, cask, or package which has been branded by an inspector, or his deputies, before thoroughly canceling, removing, and effacing the inspection brand on the same, shall be guilty of a misdemeanor, and on conviction, shall pay a fine of fifty dollars for each barrel, cask, or package thus sold or disposed of.

Adulteration.

SEC. 7. No person shall adulterate with any substance whatever, for the purpose of sale, or for use for illuminating purposes, any oil obtained from petroleum, or any obtained from coal, in such manner as to render it dangerous to use; nor shall any person knowingly sell or offer for sale, or knowingly use, any oil obtained from petroleum, or from coal, or from the products of either, for illuminating purposes within this state, which, by reason of being adulterated, or for any reason whatever, will flash at a temperature less than one hundred and twenty degrees of Fahrenheit's thermometer, under the test herein prescribed: provided, however, that oils not bearing the test herein prescribed may be used in street lamps for lighting streets or public wharves, ways, or alleys, and also that the gas or vapor from such oils may be used for illuminating purposes when the oils from which said gas or vapor is generated are contained in reservoirs under ground outside the building illuminated or lighted by said gas. And any person violating any of the provisions of this section, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by imprisonment in the county jail not more than one year, or by a fine not exceeding five hundred dollars, or by fine and imprisonment, at the discretion of the court.

Proviso as to street lamps.

Penalty.

Responsibility of parties.

SEC. 8. Any person or persons who shall sell, or keep for sale, to be consumed in this state, any illuminating oil manufactured from petroleum or its products, and not inspected as provided in this act, shall be responsible to the party or parties injured for any violation of the provisions

of this act, by any clerk or person in their employ, in the sale of said oil.

Inspectors to enter complaint of violations of act.

SEC. 9. It shall be the duty of the inspector, or any deputy inspector, who shall know of the violation of any of the provisions of this act, to enter complaint before any court of competent jurisdiction against any person so offending; and in case of any inspector, or deputy inspector, having knowledge of the violation of the provisions of this act, shall neglect to enter complaint as required by and provided for in this act, he shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not exceeding five hundred dollars, and be removed from his position as such inspector or deputy inspector.

Inspectors not to traffic in petroleum.

SEC. 10. No inspector or deputy inspector shall, while in office, traffic, directly or indirectly, in any article in which petroleum or other product thereof is a constituent part, which he is appointed to inspect; and in case of any violation of the provisions of this section by any inspector, or deputy inspector, and upon conviction thereof, he shall be fined in any sum not exceeding five hundred dollars, and removed from his position as such inspector or deputy inspector. All questions of disputes arising between the inspectors and manufacturer or dealers, shall be submitted to the state chemist, at the agricultural college at Columbus, Ohio, for his consideration, and his decision shall be final.

Liability for damages.

SEC. 11. That any person who shall sell or cause to be sold, any of the oils mentioned in this act for illuminating purposes, which is below one hundred and twenty degrees Fahrenheit, when tested as is provided in section one of this act, shall be liable to any person purchasing said oil, or to any person injured thereby, for all damages resulting from any explosion of said oil, and it shall be no defense that the inspector's brand was upon the cask, or package, or barrel from which the oil was taken.

Repeals.

SEC. 12. That the act to regulate the sale of illuminating oils and other substances for illuminating purposes, passed April 27, 1872 (O. L., vol. 69, page 161), the act to amend section one of an act to regulate the sale of mineral oils and other substances for illuminating purposes, and to repeal certain acts therein named, passed February 7, 1873, (O. L., vol. 70, page 23), and section twenty-four, of chapter eight, of the act passed May 5, 1877 (O. L., vol. 74, page 271), be and the same are hereby repealed.

SEC. 13. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 15, 1878.

[Senate Bill No. 92.]

AN ACT

To amend sections nine, ten and eleven of an act entitled "an act defining the duties of sheriffs and coroners in certain cases," passed February 25, 1824. (S. & C., p. 1397.)

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That sections nine, ten, and eleven of the above recited act be so amended as to read as follows:

Inquest by coroner, and proceedings thereon.

Section 9. That whenever information shall be given to any coroner that the body of any person whose death is supposed to have been caused by violence, has been found within his county, he shall appear forthwith at the place where such body shall be, shall issue subpœnas for such witnesses as he deems necessary, and administer to them the usual oath or affirmation, and proceed to inquire how the deceased came to his death, if by violence from any other person or persons, by whom, whether as principals or accessories before or after the fact, together with all the circumstances relating thereto. The testimony of the witnesses shall be reduced to writing, by them respectively subscribed, and with the finding and recognizances hereinafter mentioned, if any, shall be by the coroner returned to the clerk of the court of common pleas of the proper county, and he shall if he deem it necessary cause the witnesses attending as aforesaid to enter recognizance, in such sum as may be proper, for their appearance at the succeeding term of the court of common pleas for said county, to give testimony concerning the matter aforesaid, and he may require any or all of said witnesses to give security for their attendance, and if they or any of them neglect to comply with the requirements made, he shall commit the person so neglecting to the prison of the county, to remain until discharged by due course of law.

Same.

Section 10. That it shall be the duty of said coroner to draw up his finding of facts, in writing, and subscribe the same. And if said coroner shall find that the deceased came to his or her death by force or violence, and by any other person or persons, and if the person or persons, so charged, or any of them, shall be there present, it shall be the duty of said coroner to arrest such person or persons and convey him or them immediately before a proper officer for examination according to law; and if said persons, or any of them, shall not be present, it shall be the duty of the coroner forthwith to inform one or more justices of the peace, and the prosecuting attorney, if within the county, of the facts so found in order that the persons may be immediately dealt with according to law.

Coroner's writs.

Section 11. The coroner may issue any writ required by this act to any constable of the county in which such body shall be found, or if, in his opinion, the emergency shall require, to any discreet person of the county; and every con-

stable, or other person who may have been appointed as aforesaid, who shall fail to issue any warrant to him directed, shall forfeit and pay a fine of twenty-five dollars, to be recovered upon the complaint of the said coroner, before any court having jurisdiction thereof. And any coroner who shall refuse or neglect to perform any of the duties herein required of him, shall upon indictment and conviction in the court of common pleas in which the offense shall have been committed be fined such sum as the court shall determine, not exceeding five hundred dollars, all of which fines shall be to and for the use of the county.

Penalties against officers, etc., for neglect of duty.

SEC. 2. That sections nine, ten and eleven of the above recited act, and so amended, be and the same are hereby repealed.

SEC. 3. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 15, 1878.

[Senate Bill No. 189.]

AN ACT

To amend section one hundred and fifty-four, chapter five, division five, of an act to amend, revise, and consolidate the statutes relating to municipal corporations, passed May 9, 1878.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That section one hundred and fifty-four, of the above recited act, be amended so as to read as follows:

Police in villages, and in certain cities.

Section 154. That the council of villages, and of cities of the second class, except those of the first and second grades, shall have power to provide by ordinance for the appointment by the mayor, with the consent of the council, of such number of police and night watchmen as they may think necessary for the good government of the corporation, who shall hold their office for one year, unless sooner removed, and the council may appoint such number of constables to be policemen, residing within such city or village, as they may deem proper, and provide by ordinance for the payment of the same.

SEC. 2. That said section one hundred and fifty-four, chapter five, division five, of an act to amend, revise, and consolidate the statutes relating to municipal corporations, passed May 9, 1878, be and the same is hereby repealed.

SEC. 3. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 15, 1878.

[House Bill No. 475.]

AN ACT

To amend the act of April 27, 1872, entitled "an act to regulate insurance companies doing an insurance business in the state of Ohio." (69 v. 140.)

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That section twenty, of chapter one, as amended April 24, 1873 (70 v. 147), and section eighteen, of chapter two, as amended April 2, 1873 (70 v. 97), of the above named act be so amended as to read as follows:

Foreign insurance companies other than life—must obtain license to do business in Ohio.

Section 20. It shall not be lawful for any insurance company, association, or partnership, incorporated, organized, or associated under the laws of any other state of the United States, or any foreign government, for any of the purposes mentioned in this chapter, directly or indirectly, to transact any business of insurance in this state, without first procuring from the superintendent a certificate of authority so to do; nor shall it be lawful for any person or corporation, directly or indirectly, to act as agents in this state for any such company or association, either in procuring applications for insurance, taking risks, or in any manner transacting the business of insurance, without first procuring from the superintendent a license so to do, stating also that said company has complied with all the requisitions [requirements] of this act applicable to such company, and depositing a certified copy of such license in the office of the recorder of the county in which the office or place of business of such agent or agents may be established; nor shall it be lawful for any insurance company, association, or partnership, organized under the laws of any other state, directly or indirectly, to take risks or transact business of insurance in this state, unless possessed of the amount of actual capital required of similar companies formed under the provisions of this chapter, nor unless the entire capital stock of said company be fully paid up and invested as required by laws of the state where organized; and any company desiring to transact any business as aforesaid, by any agent or agents, in this state, shall file with the superintendent a written instrument duly signed and sealed, authorizing any agent or

Agent's license, and what it shall state, etc.

Capital required, and its investment, etc.

Service of process upon agent, etc.

agents of such company in this state to acknowledge service of process for and in behalf of such company in this state, consenting that service of process, mesne or final, upon any such agent or agents, shall be taken and held to be as valid as if served upon the company according to the laws of this or any other state or country, and waiving all claim or right of error by reason of such acknowledgment of service, and consenting that suit may be brought thereon in the county where the property insured was situate, or where the same was insured, and that service of process made therein by the sheriff of such county, by sending a copy thereof by mail addressed to the company at the place of its principal office, located in the state where such company was organized, in case of a company organized under the laws of any other state of the United States, and in case of a foreign insurance company, then such copy of summons or other process shall be mailed, postage prepaid, to such company, at the place of its principal office in the United States, at least thirty days prior to taking judgment in said suit, shall be as valid as if personally made upon said company according to the laws of this state or any other state or government; and in case suit shall be brought against any company which has ceased to do business in this state as aforesaid, at least thirty days prior to the date of taking judgment in said suit; but the sheriff's return shall show the time and manner of such service. If any such foreign insurance company, or company organized under the laws of any other state of the United States, or any foreign government, and doing business within this state, makes an application for a change of venue, or to remove any suit or action to which it is a party, heretofore or hereafter commenced in any court of this state, to the United States district or circuit court, or to any federal court, the superintendent of insurance shall forthwith revoke and recall the license or authority to such company to do or transact business within the state of Ohio, and no renewal or authority shall be granted to such company for three years after such revocation; and such company shall thereafter be prohibited from transacting any business in the state of Ohio until again duly licensed and authorized. It shall also file with the superintendent a certified copy of their charter or deed of settlement, together with a statement, under the oath of the president or vice president, or other chief officer, and the secretary of the company for which he or they may act, stating the name of the company and place where located, the amount of its capital, with a detailed statement of the facts and items required from the companies organized under the laws of this state, as per section eighteen and nineteen of this chapter; also a copy of the last annual report, if any was made, under any law of the state by which such company was incorporated.

Application for change of venue, etc., a forfeiture of license.

Copy of charter, etc., to be filed with insurance commissioner.

Foreign life insurance companies must obtain license to do business in Ohio.

Agent's license, and what it shall state, etc.

Capital required, and its investment, etc.

Service of process upon agent, etc.

Application for change of venue, etc., a forfeiture of license.

Section 18. It shall not be lawful for any life insurance company, organized by act of congress, or by or under the laws of any other state of the United States, to transact any business of insurance in this state, without first procuring from the superintendent of insurance a certificate of authority so to do; nor shall it be lawful for any person or corporation, directly or indirectly, to act as agent in this state for any such company, either in procuring applications for insurance, taking risks or in any manner transacting the business of insurance, without first procuring from the superintendent of insurance a license so to do, in which said superintendent shall state that said company has complied with all the requisitions of this act applicable to such company, and depositing a certified copy of such license in the office of the recorder of the county in which the office or place of business of such agent shall be established; nor shall it be lawful for any such insurance company to take risks, or transact any business of insurance in this state, unless possessed of the amount of actual capital required of similar companies organized in this state, under the provisions of this act; nor unless the entire capital stock of said company is fully paid up, and invested as required by the laws of the state where organized; and any such company, desiring to transact any such business in this state, by an agent or agents, shall file with the superintendent of insurance a written instrument, duly signed and sealed, authorizing any agent or agents of such company in this state, to acknowledge service of process for and in behalf of such company in this state, consenting that the service of process, mesne or final, upon any such agent or agents, shall be taken and held to be valid, as if served upon the company, according to the laws of this or any other state or government, and waiving all claims or right of error by reason of such acknowledgment of service; and in case suit shall be brought against any company which has ceased to do business in this state, as aforesaid, and there shall be no agent of said company in the county in which suit is brought, upon whom service of process can be had, as provided in section nineteen of this act, service upon such company shall be had by the sheriff mailing a copy of the summons or other process, postage prepaid, addressed to such company at the place of its principal office, located in the state where such company was organized; in case of a company organized under the laws of any state of the United States, and in case of a foreign insurance company then such copy of summons or other process shall be mailed, postage prepaid, to such company, or the place of its principal office in the United States, at least thirty days prior to the date of taking judgment in said suit; but the sheriff's return shall show the time and manner of such service. If any such foreign life insurance company or any company organized under the laws of any other state of the United States, and doing business within this state, makes an application for a change of

venue, or to remove any suit or action to which it is a party, heretofore or hereafter commenced, in any court of this state to the United States district or circuit court, or to any federal court, the superintendent of insurance shall forthwith revoke and recall the license or authority to such company to do or transact business within the state of Ohio, and no renewal or authority shall be granted to such company for three years after such revocation; and such company shall thereafter be prohibited from transacting any business in the state of Ohio, until again duly licensed and authorized. Said company shall also file a certified copy of its charter, or of settlement, together with a statement, under the oath of the president, vice president, or other chief officer or manager, and secretary of such company, stating the name of the company, the place where it is located, and amount of its capital, with a detailed statement of all the facts required in the annual statements required of companies organized under this chapter, except as to statement required by item fourteen, section seventeen, of this chapter, which statement shall be required of said companies only when required by the superintendent of insurance, for purposes of actual valuation, as provided by the insurance laws of this state; also, a copy of their last annual report, if any were made; nor shall it be lawful for any such company to transact any business of insurance in this state, unless at least one hundred thousand dollars of its capital is invested in the interest paying bonds or stocks of the United States, or of this state, or of some other state of the United States, of the market value of one hundred thousand dollars, in the city of New York, or in bonds and mortgages of unincumbered real estate in this state, or in the state under the laws of which such company is or may be organized, of at least double the value of the amount loaned thereon; and such bonds and mortgages deposited with the superintendent of insurance of this state, or the chief financial or other officer of the state in which such company is or may be organized, designated by the laws of such state to receive the same; and if said bonds and mortgages be deposited with the superintendent of insurance or other officer of another state as aforesaid, the superintendent of insurance of this state shall be furnished with the certificate of such other state officer, under his hand and official seal, that he as such officer, holds in trust and on deposit, for the benefit of all the policy holders of such company, the securities above mentioned, giving the items of such securities, and stating that he is satisfied such securities are worth at least one hundred thousand dollars: provided, that nothing herein contained shall be construed to prevent the company from collecting the interest on such securities, so long as it continues solvent, and complies with all the provisions of this act applicable to it, nor from exchanging for other securities of equal value, and of the kind hereinbefore named, with the officers having them in trust as aforesaid; and pro-

Copy of charter, etc., to be filed with insurance commissioner.

Further as to investment of capital.

Interest on and exchange of securities.

Cash assets of mutual companies may count as capital stock.

As to false answers to interrogatories in application for policy.

vided, further, that in the cases of mutual companies, actual cash assets of the same amount and description, invested and deposited as required by the laws of the state wherein organized, shall be accepted in lieu of capital stock: provided, that no answer or answers to any interrogatory or interrogatories, made by any applicant, in his or her application for a life policy, shall bar the right to recover upon any policy issued upon such application, or be used in evidence upon any trial to recover upon such policy, unless such answer or answers shall first be clearly proven to have been willfully false and fraudulently made, and that such answer or answers are material, and induced such policy to be issued, and but for such answer or answers such policy would not have been issued; and, moreover, that the agent or company had no knowledge of the falsity or fraud of such answer or answers.

SEC. 2. Said sections as amended April 24, 1872, and April 2, 1873, respectively, are hereby repealed.

SEC. 3. This act shall be in force from its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 15, 1878.

[Senate Bill No. 86.]

AN ACT

To amend section seven (7) of an act entitled an act to provide for establishing an insurance department in the state of Ohio, passed March 12, 1872, amended April, 1873 (Vol. 69 O. L., p. 34; Sayler's statutes of Ohio, chapter 2,154, p. 2,605), and section eleven (11), chapter two (2) of an act to regulate insurance companies doing an insurance business in the State of Ohio, passed April 27, 1872, amended April, 1873 (Vol. 69, O. L., p. 153; Sayler's statutes, chap. 2,218, p. 2,738.)

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That section seven (7) of an act entitled an act to provide for establishing an insurance department in the state of Ohio, passed March 12, 1872, amended April, 1873, (Volume 69 Ohio Laws, page 34; Sayler's statutes of Ohio, chapter 2,154, page 2,605,) be amended so as to read as follows:

Inspection of insurance companies by state superintendent.

Section 7. It shall be the duty of the superintendent of insurance, whenever he shall have good reasons to suspect the correctness of any annual statement, or that the affairs of any company are in an unsound condition, to make, or cause to be made, an examination into the affairs of any such insurance company, for the purposes named in this act, incorporated in this state, or doing business by its agencies in this state; and it shall be the duty of the officers or agents of any insurance company doing business in this state, to cause their books to be opened for the inspection of said su-

perintendent, or the person or persons so appointed, and otherwise to facilitate such examination, so far as it may be in their power so to do; and provided further, that the superintendent of insurance shall annually make, or cause to be made, an examination of the assets of every life insurance company organized under the laws of this state, and shall ascertain if the same are invested in the manner prescribed by law at the date each investment was made, and also if the last annual statement of assets and unpaid death claims filed by each life insurance company as required by law was correct. The actual expenses incurred by said examination shall be paid out of the fees paid by the insurance companies to the insurance department.

Annual examination of assets of life companies.

SEC. 2. That section eleven (11), of chapter two (2), of an act entitled an act to regulate insurance companies doing an insurance business in the state of Ohio, passed April 27, 1872, amended April, 1873 (Volume 69, Ohio Laws, page 153, Sayler's statutes, chapter 2,218, page 2,738), be amended so as to read as follows:

Section 11. It shall be lawful for any life insurance company organized under the laws of this state, to invest its accumulations after the passage of this act as follows, and also to sell, change, or re-invest the same, or any part thereof, at pleasure:

Investment of accumulations of home life companies.

1. In United States, state, county, or city bonds, provided that the market value of said bonds, at the date of purchase, shall be at least eighty per cent. of their par value.

2 In bonds and mortgages upon unincumbered real estate, the market value thereof being at least double the amount loaned thereon, exclusive of buildings at the date of said investment. The value of such real estate shall be determined by a valuation made under oath by two real estate owners, residents of the county where the real estate may be located.

3 Loans may be made upon the pledge of said bonds, or mortgages, providing that the current market value of said bonds, or mortgages, shall be at least twenty-five per cent. more than the amount loaned thereon.

4. Loans may also be made upon a company's own policies, but not exceeding the reserve thereon, which is the present value, according to the American mortality experience tables, with interest at four per cent., the same being the amount of debts of life insurance companies, by reason of their outstanding policies in gross.

This act shall not prohibit any life insurance company from accepting any other assets than herein enumerated in payment of debts due said insurance companies in order to protect their interests, or from acquiring real estate for their own use, or by foreclosure in accordance with the present laws of this state.

SEC 3. That sections seven (7) and eleven (11) of the foregoing recited acts be and the same are hereby repealed.

SEC. 4. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH.
President of the Senate.

Passed May 15, 1878.

[House Bill No. 270.]

[AN ACT]

To authorize compensation to be paid members of [boards of] equalization and their assistants in certain cities.

Pay of board of equalization of Dayton for 1877.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That in each county of this state, containing a city of the second class, having a population exceeding thirty thousand and less than thirty-one thousand and five hundred inhabitants, at the last federal census, wherein the members of the board of equalization for such city, and the assistants of such board, performed services in the year 1877, pursuant to the provisions of the statute relating to annual boards of equalization for cities of the first and second class of this state, and have not been fully paid for such services, the commissioners of such county be and they are hereby authorized and instructed to pay all the members (except the county auditor) for their services as members of such board of equalization a sum not exceeding one hundred and twenty-five dollars each for their entire compensation, and such assistants of said board, as were employed by the auditor of any such county, or by such board, at the rate of three dollars per day for the time actually employed in such service; said sums to be paid from any funds of the county not otherwise appropriated; and the auditor of the county shall draw his warrant, and the treasurer of [the] county shall pay the same upon the order of the county commissioners.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 15, 1878.

[House Bill No. 541.]

AN ACT

To provide for keeping in repair, improved, graveled, macadamized, free and abandoned turnpike roads in certain counties.

How certain roads, in certain counties, to be maintained and repaired.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That in any county of this state having a population of not less than twenty-four thousand one hundred and fifty, and not more than twenty-four thousand and two hundred at the last federal census, improved, graveled, macadamized, and free and abandoned turnpike roads shall be repaired, kept up, and maintained in the manner provided by an act entitled "an act to provide for the keeping in repair of graveled or macadamized roads heretofore or hereafter constructed under the laws of the state of Ohio, and to authorize county commissioners to convert such of said roads," passed May 7, 1869, (O. L. vol. 66, p. 131,) as amended April 2, 1873, (O. L. vol. 70, p. 95,) and the acts amendatory and supplementary thereto.

SEC. 2. This act shall be in force and take effect on and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 15, 1878.

[House Bill No. 498]

AN ACT

To provide for the creation and regulation of corporate companies for the purpose of yachting, hunting, fishing, the protection of fish and game, and for lawful sporting purposes.

Formation of corporations for lawful sporting purposes, etc.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That from and after the passage of this act it shall be lawful for any number of persons not less than five to associate together to form a corporate company for the purpose of yachting, hunting, fishing, the protection of fish and game, and for lawful sporting purposes.

What certificate shall specify, and and its acknowledgment and record.

SEC. 2. That whenever any number of persons, as named in the first section of this act associate together, to form a corporate company for any one or more of the purposes aforesaid, they shall under their hands and seals make a certificate which shall specify:

1. The name of such company.

2. The place where the office of such company is located, together with a description of all real estate owned, controlled, or covered by any exclusive right by such company and where situated.

3. If the assets of such company shall be held by the members thereof in the form of stock, then such certificate shall state the amount of such stock and the amount of each share. Such certificate shall be acknowledged and recorded in the same manner, and to the same extent as is provided for the acknowledgment and record of certificates of manufacturing companies in section eighty S. & C. p. 301.

Powers of such corporations.

SEC. 4. That when the foregoing provisions have been complied with, the persons named as corporators in said certificate shall be authorized to carry into effect the objects named in said certificate, in accordance with the provisions of this act; and they and their associates, successors and assigns, by the name and style provided in said certificate, shall thereafter be deemed a body corporate, with succession, with power to sue and be sued, plead and be impleaded, defend and be defended, contract and be contracted with, acquire and convey at pleasure all such real and personal estate or interest therein as may be necessary and convenient to carry into effect the objects of the incorporation, to make and use a common seal, and the same alter at pleasure, and do all needful acts to carry into effect the object for which it was created.

Same.

SEC. 5. That such company shall be a body corporate and shall have full power to make and establish such rules and by-laws for its government as it may deem best, to decide what officers it shall have, and to prescribe the times and manner of elections, and to make such other rules, regulations and by-laws as may be necessary and expedient to effect the objects of such an organization.

SEC. 6. This act shall be in force from and after its passage.

JAMES E. NEAL.
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 15, 1878.

[House Bill No. 529.]

AN ACT

To amend an act entitled "an act to provide for establishing an insurance department in the state of Ohio," passed March 12, 1872, as amended April 26, 1873.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the above recited act be amended so as to read as follows:

Annual valuation of obligations of life insurance companies.

Section 14. It shall be the duty of the superintendent, annually, to make or cause to be made net valuation of all outstanding policies, additions thereto, unpaid dividends, and all other obligations of every life insurance company transacting business of this state; and for the purpose of such valuations, and for making special examinations of the

condition of life insurance companies, as provided in the laws of this state relating to life insurance companies, and for valuing all policies of whatever description, and for any purpose whatever, the rate of interest shall be four per cent. per annum, and the rate of mortality shall be established by the tables known as the American Experience Tables: provided, that whenever the laws of any other state of the United States shall authorize a valuation of life insurance policies by some designated state officer, according to the standard herein provided, or according to any other standard which shall make the value of the policy not less than that of the standard herein provided, the valuation made according to the said standard, by such officer, of the policies and other obligations of any life insurance company not organized under the laws of this state, and certified by said officer, may be received as true and correct, and no further valuation of the same shall be required of such company by the superintendent of insurance.

SEC. 2. That section fourteen of the above recited act be and the same is hereby repealed.

SEC. 6. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 15, 1878.

[House Bill No. 84.]

[AN ACT]

For the protection of certain burial grounds and to amend an act passed April 18th, 1874. (O. L., vol. 71, page 109.)

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the title, right of possession, and control to and in all public graveyards and burial grounds located without the corporate limits of any city, town, or village, which have been set apart and dedicated as public graveyards or burial grounds, and grounds which have been used as such by the public, but not expressly dedicated, except such as may be owned or under the care of any religious or benevolent society, or any incorporated company or association, or under the control of the authorities of any city, town, or village, shall severally be vested in the trustees of the township where each may be located; and it shall be the duty of such trustees to provide for the protection and preservation of such grounds, and to prohibit interments in any such grounds when new grounds have been procured for township cemeteries or burial grounds, and where such old

Title to certain burial grounds vested in township trustees.

Duties and authority of trustees.

graveyards or cemeteries are in or near village or town plats, and the public health is liable to be injured by further interments in old burial grounds so situated, and they are hereby authorized and required to institute suits to recover possession thereof, and to remove trespassers therefrom, and recover damages for injuries thereto or any part thereof, or any fence, or hedge inclosing the same, or any tomb or monument therein; and the said trustees shall enclose, and are hereby required, to enclose said burying grounds, with a substantial fence or hedge, and keep the same in good repair, and to levy a tax for that purpose, not exceeding one-half of one mill in any one year, upon all the taxable property of their township; any township trustee who shall neglect or refuse to perform the duties required of him under this act shall be deemed guilty of a misdemeanor, and, on conviction thereof before any court of competent jurisdiction, shall be fined not to exceed twenty dollars, nor less than five dollars for each offense; and when collected shall be paid over to the treasurer of their township, within ten days thereafter, to be applied by the trustees of said township in repairing said cemetery or burying grounds.

Penalty for refusal or neglect of trustees.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 15, 1878.

[Substitute for House Bill No. 365.]

AN ACT

To apportion the state of Ohio into congressional districts, and to repeal an act therein named.

Apportionment of state into congressional districts.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That the state of Ohio, shall be divided into twenty districts for the election of representatives to congress, and each district shall choose one representative in the manner following to-wit:

First district.

First District.—That so much of the county of Hamilton as is now contained within the limits of the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, and eighteenth wards of the city of Cincinnati, as they are now constituted, and the townships of Anderson, Columbia, Spencer, Symmes, and Sycamore; the corporations of Reading, Avondale and the north-east and south-east precincts of Mill Creek township shall compose the first district.

Second District—The balance of the county of Hamilton, now contained within the limits of the twelfth, thirteenth, four-

teenth, fifteenth, sixteenth, seventeenth, nineteenth, twentieth, twenty-first, twenty-second twenty-third, twenty-fourth, and twenty-fifth wards of the city of Cincinnati, as they are now constituted, and the townships of Springfield, Colerain, Green, Delhi, Miami, White, Water, Harrison, and Crosly; the corporations of Harrison, Clifton, Riverside, and Glendale, as they are now constituted, and the western precinct of Mill Creek township shall compose the second district. Second district.

Third District.—The counties of Montgomery, Butler, and Warren shall compose the third district. Third district.

Fourth District.—The counties of Greene, Clarke, Champaign, Logan, and Union shall compose the fourth district. Fourth district.

Fifth District.—The counties of Preble, Darke, Miami, Shelby, Auglaize, and Mercer shall compose the fifth district. Fifth district.

Sixth District.—The counties of Van Wert, Allen, Putnam, Paulding, Defiance, Williams, Henry, and Fulton shall compose the sixth district. Sixth district.

Seventh District.—The counties of Lucas, Wood, Hancock, Ottawa, Sandusky shall compose the seventh district. Seventh district.

Eighth District.—The counties of Seneca, Crawford, Wyandot, Hardin, Marion, and Morrow shall compose the eighth district. Eeighth district.

Ninth District.—The counties of Franklin, Pickaway, Madison, Delaware, and Fayette shall compose the ninth district. Ninth district.

Tenth District.—The counties of Fairfield, Hocking, Vinton, Gallia, and Meigs shall compose the tenth district. Tenth district.

Eleventh District.—The counties of Clermont, Brown, Adams, Highland, and Clinton shall compose the eleventh district. Eleventh district.

Twelfth District.—The counties of Scioto, Pike, Ross, Jackson and Lawrence shall compose the twelfth district. Twelfth district.

Thirteenth District.—The counties of Monroe, Noble, Morgan, Washington, and Athens shall compose the thirteenth district. Thirteenth district.

Fourteenth District.—The counties of Guernsey, Muskingum, Licking, and Perry shall compose the fourteenth district. Fourteenth district.

Fifteenth District.—The counties of Richland, Knox, Holmes, Coshocton, and Tuscarawas shall compose the fifteenth district. Fifteenth district.

Sixteenth District.—The couties of Ashland, Wayne, Stark, and Portage shall compose the sixteenth district. Sixteenth district.

Seventeenth District.—The counties of Erie, Huron, Lorain, Medina, and Summit shall compose the seventeenth district. Seventeenth district.

Eighteenth District.—The counties of Carroll, Columbiana, Jefferson, Harrison, and Belmont shall compose the eighteenth disttict. Eighteenth district.

Nineteenth District.—The counties of Geauga, Lake, Ashtabula, Trumbull, and Mahoning shall compose the nineteenth district. Nineteenth district.

Twentieth District.—The county ot Cuyahoga shall compose the twentieth district. Twentieth district.

SEC. 2. The act of April 27, 1872, entitled an act to appor-

tion the state of Ohio into congressional districts is hereby repealed.

SEC. 3. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 15, 1878.

[House Bill No. 407.]

AN ACT

Defining the powers and prescribing the duties of the board of public works.

Public works shall be divided into three divisions.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the public works of the state shall be divided by the board of public works into three grand divisions or districts, to be designated by such or numbers as said board shall deem proper, and to be of such limits and extent as said board, from time to time, shall prescribe; and each member of the board of public works shall, as the acting commissioner of said board, take charge of such division as may be assigned to him by said board and be responsible to the extent of his power and authority, for the due and faithful administration of the affairs of such district or division.

Term of office of members.

SEC. 2. The members of the board of public works now in office, shall continue to hold their offices for the term of three years from the time they were sworn into office, and until their successors shall be elected and qualified; and the term of office of the member of the board hereafter annually elected, shall commence on the second Tuesday of February thereafter. And each member of the board shall receive eight hundred dollars per annum salary, and not to exceed fifty dollars per month traveling expenses, during the time the state has possession of the public works, and eight hundred dollars per annum salary thereafter, but shall not receive any traveling expenses. Said salary and expenses shall be paid monthly after the services are rendered and expenses incurred, upon the order of the board, out of the canal fund on the warrant of the auditor.

Salary and expenses of members.

Members shall take oath and give bond.

SEC. 3. The members of the board of public works shall each take an oath or affirmation to support the constitution of the United States and of the state of Ohio, and to honestly and impartially discharge the duties of the office; and shall also give bond, with sufficient security, to be approved by the governor, in the penal sum of not less than thirty thousand dollars, conditioned for the honest and faithful discharge of the respective duties of their office, and for the

faithful accounting for and paying over of all moneys which may come into their hands respectively, according to law, which bonds, with the approval of the governor indorsed thereon, shall be filed with the treasurer of state. The members of the board of public works shall designate and appoint one of their number to act as the president of said board, and said board shall continue to keep the "office of public works" at the seat of government, in which office shall be kept all the books and papers, records, and other documents of said board, which shall be open to the inspection of all persons interested, at all reasonable times; and all notices or reports required by law to be given to the said board by any of the officers of the state, when left in writing at said office, or deposited with any person who may have charge of the same, shall be considered as having been duly given and served upon said board. The president shall have charge of said "office of public works," and the custody of the records, books, papers, and documents aforesaid, and shall conduct the correspondence of said board.

Bond to be approved by governor.

Office of public works to be kept at seat of government.

SEC. 4. The office of chief engineer of the public works is hereby created, and said officer shall be appointed by the governor, with the consent of the senate; he shall be a practical civil engineer, and shall hold his office for the term of two years unless the state re-leases the public works. His salary shall be at the rate of two thousand dollars per annum, to be paid monthly out of the canal fund after the services are rendered, upon the order of the board of public works and on the warrant of the auditor of state, and he shall give bond, with good and sufficient security, in the sum of ten thousand dollars, conditioned for the faithful performance of his duties, and shall take an oath of office similar to that prescribed in section three for the officers therein named. He shall, under such rules and regulations as the board of public works may prescribe, have supervision and oversight of the several resident engineers, superintendents, and other officers, and report delinquencies whenever they occur. The chief engineer shall have general supervision, under the direction of the board, of all the public works belonging to this state. The board of public works shall appoint one resident engineer for each grand division of the public works. Each resident engineer shall be subject to the direction of the chief engineer, and shall have supervision of such portion of the said works as may be assigned to him by the board. Said resident engineer shall be subject to such rules and regulations not contrary to law, as may be from time to time prescribed by said board, and the respective terms of office of said resident engineers shall commence on the sixteenth day of February, 1878, and annually thereafter on the second Tuesday of February. The salary of resident engineers shall be one thousand two hundred dollars per annum during the time the state has possession of the public works and nine hundred dollars per annum thereafter, and paid on

Chief engineer, how appointed.

Salary.

Shall give bond and take oath.

Shall have supervision of resident engineers, etc.

Board shall appoint resident engineers.

Term of office.

Salary.

Board shall regulate tolls, fines, water rents, and appoint collectors.

Board shall appoint secretary.

And one additional clerk.

Also superintendents of repairs, lock tenders, etc.

Engineers, collectors, etc., to give bond.

Bond deposited with auditor of state.

Secretary, superintendents, etc., appointed during pleasure of board.

Board shall fix salaries. Number of superintendents, etc., shall not exceed number employed by lessees.

the check of the acting commissioner of the division where said engineer may be located. Said board shall have power to regulate the rate of tolls to be collected on the public works of this state not exceeding the rate of tolls established in 1858, and to appoint collectors of the same, together with the water rents and fines, at such points as shall have been or may be established for the collection of tolls, as hereinafter provided; and said collectors shall be governed by such rules and regulations as the said board may prescribe, not inconsistent with law. Said board of public works shall have power to appoint one secretary, who shall be paid monthly after the services are rendered, upon the order of the board on the warrant of the auditor of state. They shall also have power to appoint an additional clerk, if necessary, at a cost not exceeding seven hundred dollars per annum. They shall also have power to appoint superintendents of repairs not exceeding nine in number, and assign them to such districts or divisions of the public works, as, in the judgment of the board, may be proper to assure the efficient management, repair, and preservation of said public works; and also to appoint the necessary number of lock tenders, and other employés, and assign them to posts of duty, under such rules and regulations as may be prescribed for their government. Each engineer, collector of tolls, and superintendent shall, before he enters upon the discharge of his duties as such, give bond to the state of Ohio in such sum as the board of public works may require, conditioned for the faithful discharge of the duties of his office and the proper accounting for all moneys coming into his hands as such officer, which bond, with sufficient security, approved by the board, shall at once be deposited with the auditor of state, together with the oath or affirmation of such officer that he will faithfully and diligently discharge all the duties appertaining to his office, and promote to the extent of his ability the interest of the state, so far as may be legally in his power; said oath shall be taken before an officer having the power to administer oaths, and shall be certified and attested by such officer in duplicate certificates, one of which shall be filed in the office of the board of public works, and the other in the office of the auditor of state. The secretary, each collector of tolls, superintendents of repairs, and lock tenders, and other necessary employés, shall be appointed during the pleasure of the board of public works, and may be removed from office or employment at any time when, in the judgment of the board, the public interest will be promoted thereby; the board shall fix the rate of salaries to be paid monthly out of the canal fund, upon the order of the board of public works on the warrant of the auditor of state, to the collectors, superintendents, lock tenders, and other necessary employés not exceeding the number employed by the lessees during the year 1877, grading the same according to the services and labor to be performed in each case, but in no case shall the salaries

exceed the amount paid by the lessees of the public works in the year 1877, for similar services. All vacancies that may occur by reason of death, resignation, or otherwise, in the corps of engineers, shall be filled, for the unexpired portion of the term by the board of public works, in the same manner as appointments are made for the full term, and the officer appointed for the part of a term shall be paid ratably a due proportion of the salary herein provided, and no more.

Vacancies how filled.

SEC. 5. To provide for the prompt payment of all employés and laborers, and for the purchase of materials and for incidental expenses, in the current repairs of the public works of the state, the superintendent of each division shall, at the close of every month, file with the resident engineer in charge of the division in which he is employed, duplicate time rolls of all employés and laborers employed during the month, together with itemized bills of all materials purchased for the use of the state, and bills for the subsistence of horses, and for board of hands, where the state is liable for such board, and other contingencies; and upon examination thereof, said resident engineer shall, if he approve the same, issue his certificate in favor of such superintendent of repairs, and immediately notify the secretary of said fact, upon which certificate the acting commissioner in charge, if satisfied that the certificate is correct, shall issue his check on the auditor of state, whose duty it shall be to issue his warrant on the treasurer of state for the amount specified in the check, and charge the same to the canal fund, to which fund all receipts from tolls, fines, and water rents shall be credited; and the superintendent, upon receiving the money, shall immediately proceed to pay all the indebtedness which he may have incurred on behalf of the state for labor, materials, repairs, etc., on the division in his charge; and, without delay after such payment, said superintendent shall file the original copy of the accounts theretofore filed, with the resident engineer, properly attested by the receipts of all parties named therein, as his voucher for money paid out, with the secretary of the board, whose duty it shall be to examine the same, and, if found by him to be correct, he shall credit the amount of the same to the account of said superintendent.

How employés shall be paid and materials purchased.

All receipts from tolls, water rents, etc., to be paid into canal fund.

SEC. 6. The said board of public works is hereby authorized to lease water on any of the several public works, under such rules and regulations as are, or may be, prescribed by law for leasing water power on the public works of the state. And the said board is hereby further authorized and required to make, from time to time, an examination of the leases of water power upon, or connected with, any of the public works of the state, made by the lawful agents thereof; to adjust and fix the amount of rent in arrears, or to be paid by such lessee or assigns, at such prices as they may deem just and equitable, and to cancel existing leases, with the consent of the lessees or assigns, or when such leases have become

Board authorized to lease water.

May shut off water when rent in arrears for thirty days.

forfeited, and said board shall deem the interest of the state will be promoted thereby, to shut off the water, and prevent the use thereof under any such leases, when rents shall have been due thereon, and in arrears for thirty days or more, or when the lessees refuse or neglect to put in, or permit to be put in, such gauges as are required in their leases, and to continue to keep the water shut off until such rent be paid, or such gauges be put in. And it is hereby made the duty

President to furnish auditor of state with copy of water leases.

of the president of the board of public works to furnish the auditor of state, from time to time, attested copies of all leases for water power which remain in force, and of all new leases made, and renewals or modifications of those now in force, within thirty days after the making of such lease, renewal, or modification by said board; and the said president shall, also, within the time prescribed, furnish attested copies of such original lease, renewal, or modification to each of the collectors of tolls upon whom the duty is imposed of collecting the rents therein provided for.

Collectors of tolls shall collect water rents, etc.

SEC. 7. Collectors of tolls shall, in addition to such other duties as may, from time to time, be required of them, collect all water rents due the state, or to become due, as the same shall accrue, and make such return of such collections, and pay over all moneys thus collected, in the same manner, and at the same time they are by law required to make return of and pay over the tolls by them collected. All moneys derived from tolls on the canals, or other improvements of the state, as well as all moneys derived from leases of water power, or the sales of land held by the state for canal purposes, or from any other source appertaining to the interest or management of the public works of the state, shall be paid into the treasury in the manner directed by law.

How claims shall be paid.

SEC. 8. All claims against the state, arising in the nature of awards, or for superintendence and repairs on the canals, or other improvements under the care and supervision of the board of public works, and authorized by law, shall be paid by the check of the acting commissioner in charge, on the auditor of state, whose duty it shall be to issue his warrant on the treasurer of state for the amount specified in the check, and to charge the same to the proper account for which the expenditure shall have been made. No check shall be so issued until after the consideration upon which

In case of extraordinary casualty how claims may be paid.

it is based shall have been actually rendered, except in the case of extraordinary casualties on the public works, when the engineer in charge, with the approval of the chief engineer, may issue a certificate for such sum as may be actually necessary in the emergency, and on such certificate the acting commissioner in charge of the division, if he shall approve the same, and the necessity thereof, may issue his check for the amount on the auditor of state, who shall issue his warrant for the sum named in the check on the treasurer of state, and charge the same to the canal fund; and every check shall be drawn in favor of the identical person to

whom the amount is due, and shall set forth the nature of the indebtedness, whether for materials, repairs, labor, superintendence, or otherwise; and to what object, and what point or division said materials, labor, or superintendence were applied. Every check shall set forth the specific appropriation which authorized its payment, and whether the amount due is for work done by contract or otherwise; and the check and certificate thus issued shall be registered in books, one to be kept by the engineer, and one by the acting commissioner.

How contracts for labor, etc., shall be let.

SEC. 9. That in all cases in which it may be necessary for the board of public works, by themselves or their legally authorized agent, to let contracts for the performance of labor, or the furnishing of materials, or for the construction of feeders, dykes, reservoirs, locks, dams, and other works and devices for perfecting and keeping in repair the public works under their charge, it shall be the duty of the acting commissioner of the board, by the resident engineer having charge of the division of the public works upon which said labor is to be performed, or materials furnished, to cause such general notice of the letting of said contract by publication in the newspapers and posting up advertisements, as will secure general competition; which said notice shall contain a statement of the time, place, and manner of receiving proposals of said contracts, and the character and magnitude of the work to be performed, the materials to be furnished, or both, if required, for the construction of the said works.

No member, officer, or employé to be interested in any contract.

SEC. 10. No member of the board of public works, engineer, superintendent, collector of tolls, gate-keeper, weigh-master, inspector, secretary, or clerk, or any other person holding office under said board during the location or construction of any canal or feeder, shall become interested, either in contract or purchase, directly or through another, in any lands, town lots, or water privileges for hydraulic purposes, on or adjacent to any such canals or feeders under the charge of said board, until after the expiration of his term of office; or be engaged or concerned, either directly or through another person, in any contract for labor, construction, or supplies of any description whatever. Every person found guilty of violating the provisions of this section, on conviction thereof in any court of competent jurisdiction, on indictment or information, shall be adjudged to pay a fine of not less than one hundred dollars, nor more than one thousand dollars, and shall, moreover, forfeit his office.

Penalty.

Auditor to examine and compare rolls, abstracts, etc.

SEC. 11. It is hereby made the duty of the auditor of state to cause all the rolls, abstracts, and accounts of the collectors of tolls upon the canals, slack-water, or other improvements of this state, for the season of navigation, to be thoroughly examined and compared with each other, so that any discrepancy between the amounts credited by the collectors receiving any moneys and the check kept by any

other collector shall be ascertained; and in case of any such discrepancy, the clearance upon which any such moneys purport to have been received, shall be examined for the purpose of ascertaining the true amount received; and if said auditor, after having ascertained the state of the accounts for the last season, deems it for the interest of the state to examine and compare as above, any part or all of the rolls, abstracts, and accounts for any previous year, he is authorized to cause such examination to be made, and also for each ensuing year.

Location of collectors' offices.

SEC. 12. Collector's offices, on the Ohio canal, are hereby established at Cleveland, Akron, Massillon, Dover, Roscoe, Dresden, Newark, Carroll, Columbus, Circleville, Chillicothe, Waverly, and Portsmouth; on the Miami and Erie canal, at Cicinnnati, Lockland, Middletown, Dayton, Piqua, St. Mary's, Delphos, Defiance, Maumee City, and Toledo; on the Hocking canal, at Carroll and Logan; on the Walhonding canal, at Roscoe; and on the Muskingum improvement, at Marietta, McConnelsville, Zanesville, and Dresden: provided, that if, in the opinion of the board of public works, any one or more of said offices can be dispensed with without detriment to the public interest, said board may abolish the same; and, provided, further, that said board may establish anditional offices if the public interest will, in its judgment, be promoted thereby.

Board shall report annually to governor.

SEC. 13. It shall be the duty of the board of public works to report annually to the governor, at least ten days before the assembling of the general assembly, and said report to be by him transmitted along with his message to the general assembly. Said report shall contain a full and accurate account of all moneys expended on each of the public works during the year ending on the fifteenth day of November next preceding said report, the aggregate amount of work contracted for during the year, the amount of money expended or allowed over and above the contract price, and the total value of all the work under contract remaining to be executed, estimated in each case at contract prices, together with the estimated cost of all the work in progress of execution, and such other information in relation to the public improvements as they may deem needful to the general assembly. They shall also report the revenue derived from each of the public works by tolls and other sources, how the same are levied, the manner of their collection, together with an estimate, if necessary, of such appropriations as may be required to reconstruct and keep in repair the public works of the state. The said board of public works shall also, in their said annual report, give a list of all resident engineers, assistant engineers, collectors of tolls, superintendents of repairs, weigh-masters, deputy weigh-masters, inspectors, lock-tenders and clerks, who may have been employed by said board during the year preceding said report, together with the amount of salary, allow-

ance or perquisites paid to each, whether such salary, allowance, and perquisites are fixed by law or allowed by the board, or an acting commissioner thereof; and also the amount paid and allowed for their own salaries and the contingent expenses of their office.

Act of March 24, 1860, repealed.

SEC. 14. That the act entitled "an act defining the powers and prescribing the duties of the board of public works," passed March 24, 1860, be and the same is hereby repealed.

SEC. 15. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 14, 1878.

[House Bill No. 81.]

AN ACT

For the reorganization and better management of the soldiers' and sailors' orphans' home, located at Xenia, and to repeal certain acts therein named.

Board of trustees, how appointed.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That within twelve days after the passage of this act, the governor, with the advice and consent of the senate shall appoint a board of trustees of the Ohio soldiers' and sailors' orphans' home, located near Xenia, Ohio; said board shall consist of five persons, one of whom to serve until the first day of January, 1879, one to serve until the first day of January, 1880, one to serve until the first day of January, 1881, one to serve until the first day of January, 1882, and one to serve until the first day of January, 1883, and as their respective terms of service shall expire, their successors shall be appointed for the term of five years in the manner herein provided. In case vacancies shall occur in said board of trustees, the governor shall have power, as herein provided, to fill such vacancies for the unexpired term thereof; and if the senate be not in session at the time, he shall submit such appointment to the senate for its approval at its next session.

Oath of trustees and officers.

Before entering upon their respective duties, each of said trustees, physician, superintendent, and matron herein provided for, shall take and subscribe an oath or affirmation to support the constitution of the United States, and of the state of Ohio; and also faithfully and honestly to discharge all and singular the duties of such trust, and in all things to protect the interests of the state to the best of his or her skill and ability, which oath shall be filed in the

Trustees to serve gratuitously, but allowed necessary expenses.

office of the governor. Said trustees shall perform their duties gratuitously; provided they shall have their necessary expenses paid during the time they are actually engaged in the discharge of their official duties, such payment to be made out of the state treasury, upon a warrant of the auditor of state.

Superintendent, matron, etc.

SEC. 2. Said board of trustees shall, as soon as convenient, appoint a superintendent for said institution, who shall hold his office for two years, unless sooner removed; and on the nomination of such superintendent, said board may appoint a steward, a matron, and physician, and such teachers and assistants as they may deem advisable; and said trustees shall fix all salaries not otherwise determined by law, and they shall also prescribe rules and by-laws for the government of the institution.

Qualifications, for admission.

SEC. 3. Said board of trustees are authorized to receive into said home the indigent children of deceased soldiers and sailors who lost their lives in the military or naval service of the United States during the late rebellion, or have since died by reason of wounds received, or disease contracted, while in said service, and in the line of duty as such soldier: provided, however, that no child of such deceased soldier shall be received into said home under the age of twelve years, during the lifetime of the mother of said child; and provided also, that no child shall be received into said home except the child of a deceased soldier, on account of whose death the United States has paid or is paying a pension.

Mother or guardian of child to pay over pension for support of child.

SEC. 4. That after the passage of this act the said board of trustees shall admit and continue in said home no child or children unless the mother or guardian of such child or children shall pay over to said board of trustees for the purpose of clothing said child or children the money paid by the United States as a pension on account of the death of said soldier.

Superintendent to keep account of amount of pension paid for support of child.

SEC. 5. The superintendent shall keep an accurate account of the amount of pension received on account of each and every of such children, and the amount of pension so received on account of such child shall be used for no other purpose except for the clothing of such child, and if a greater sum than is necessary to properly clothe such child shall be received as pension on account of said child, then such balance shall be paid to said child or the guardian thereof when said child leaves said home.

No admission until this act complied with.

SEC. 6. Said board of trustees shall admit no more children into said home until the provisions of this act are complied with, after which time such children as are entitled under this act to the benefits of said home, shall be received from the various counties of this state, as nearly as possible in proportion to the population thereof.

SEC. 7. It shall be the duty of said board of trustees, monthly, to visit said institution, and they shall examine the institution and the accounts of the superintendent, and

each shall certify his approval, or otherwise, on the page with the monthly balances of such superintendent, and also on the duplicate monthly balance-sheet hereinafter provided for. They shall make a record of their proceedings at all meetings, in a book to be kept for that purpose by the secretary of the board; and on the fifteenth day of November of each year, they shall make a report to the governor of the condition and wants of the institution, which shall be accompanied by full and accurate reports of the superintendent, in which shall be stated, amongst other things, the names, wages, and time of each employé during the year. The said report of the trustees shall contain a summary statement of all contracts entered into during the year, and the names of all persons interested in such contracts. Special meetings of the board may be held on the call of the president thereof; provided, each member shall have at least three days' notice thereof in writing, together with a statement of the object for which the meeting is called. The trustees and their successors in office shall have the power to receive and hold in trust, for the use and benefit of said institution, any grant or devise of land, or any donation, or bequest of money, or personal property, to be applied to the maintenance and support of any person or persons therein, or to the general use of such institution.

Board to visit institution and examine accounts, etc.

To keep record of proceedings.

Power of trustees to receive gifts, devises, etc.

SEC. 8. The superintendent shall keep a full and true account of receipts, and an itemized account of all disbursements, in a proper book, always open to the inspection of the trustees, and shall balance the same on the fifteenth day of each month; and he shall prepare and have ready at the same time, in duplicate, a balance-sheet showing the amount of money received during the preceding month, and the balance on hand at the commencement thereof, and also a full and itemized account of all expenditures and payments during the same period, and a summary of all contracts entered into, with the name of each person interested therein, and he shall also take and arrange, according to the entry in such duplicate balance-sheets, all vouchers and receipts for all disbursements during said month. After the said duplicate and balance-sheets shall have been indorsed by the superintendent and board of trustees, as provided for in the fifth section of this act, the steward shall, within two days thereafter, file said duplicate and the vouchers pertaining thereto, in the office of the probate court of Greene county, and he shall take and subscribe an oath before the said court, to be indorsed on each of said duplicate balance-sheets, that the said account is a full, true, and correct account of his said trust for the preceding month, to the best of his knowledge and belief.

Superintendent to keep account of receipts, disbursements, etc.

Duplicate and balance-sheets to be filed with probate judge of Greene county.

SEC. 9. The said probate judge shall carefully examine said account and compare the same with the vouchers, and see that the footing of figures are correct, and he shall have full power and authority at any time to examine the

Duties of probate judge as to accounts.

said superintendent under oath, touching his account, and if the judge think proper to do so, he may reduce such examination to writing, and require the superintendent to sign the same, and such examination shall then be filed with the papers of the proper monthly settlement. After having made the necessary examination, the judge of said probate court shall indorse his finding and approval or otherwise on each of said duplicate balance-sheets, one of which he shall transmit forthwith by mail to the governor, and the other, together with the vouchers, shall be filed and safely kept in the office of said probate court. Said superintendent shall not be credited with disbursements by the trustees or probate court, in his monthly account, to an amount above ten dollars in the aggregate in any one month, unless the same is accompanied with a proper voucher therefor and itemized account thereof.

Fees of probate judge for services under this act.

SEC. 10. The probate judge shall receive the sum of two dollars for the performance of his duties aforesaid, for each monthly statement and settlement, and fifty cents for the recording of each bond required to be recorded by this act, which sum shall be paid by the superintendent and carried into the next monthly account, together with the balance found by said court; and all books, papers, contracts, vouchers, etc., pertaining to the business of said institution, shall be and forever remain the property of the state of Ohio, and shall be kept and preserved as such for future use.

Superintendent to make contracts for institution.

SEC. 11. Said superintendent shall make all contracts on behalf of, and all purchases for, said institution, where they can be made on the best terms, keep the accounts, pay those employed in and about the institution, take vouchers for all expenditures, have a personal superintendence of the farm, garden, and grounds, and perform such other duties as may be assigned him by the board of trustees; he may make engagement with, and discharge those employed in and about the institution.

Bond of superintendent.

SEC. 12. The superintendent shall, before entering on his duties, enter into a bond to the state of Ohio, with at least two good and sufficient sureties, to be approved by the probate court of the county in which such institution is located, in the penal sum of twenty thousand dollars, conditioned that he will faithfully and honestly perform the duties of his office, and pay over and account for all money and property that shall come into his hands by reason of his said office, belonging to the state or to any other person; which bond shall be recorded in the journal of said probate court and filed in the office of the governor.

When board to advertise for supplies.

SEC. 13. Whenever, in the opinion of the board of trustees, more than five hundred dollars' worth of any one article will be needed for the use of the institution during any one year, then it shall be the duty of said board to advertise for sealed bids to furnish at the institution such articles at such times and in such quantities as the superin-

tendent may, from time to time, direct, each bid to be accompanied with a bond in such amount as the board may direct, with good and sufficient surety that such bidder, if the contract be awarded to him, will fulfill and perform the contract on his part; and all such contracts shall be awarded to the lowest bidder, but said board may reject all bids and re-advertise.

Board of trustees may remove officer of institution.

SEC. 14. The said board of trustees may at pleasure move [remove] any matron or physician, teacher or employé, and they may remove the superintendent also, for incompetency, gross neglect of duty, or refusal to discharge the duties devolving upon him, or for any misconduct which renders it improper for him longer to continue at the head of the institution, and may direct the discharge of a pupil or inmate, when they shall deem it expedient. The superintendent may suspend any physician, matron, or employé, and at the first meeting of the trustees thereafter he shall submit in writing the cause for which suspension was made, and if the trustees find cause of offense sufficient, they shall approve the action of the superintendent, but if the offense of the party so suspended is not of a character to merit a discharge, the trustees shall restore him to duty, and his pay shall continue as if no such suspension had taken place. Any officer or employé who shall be discharged for misconduct shall not thereafter be permitted to hold any position or place in the institution.

No trustee or officer to be interested in any contract in behalf of institution.

SEC. 15. No trustee or any officer of the institution shall hereafter be either directly or indirectly interested in the purchase of building material or any article of furniture or supply for the use of or in any contract in behalf of said institution, and no member of any board of trustees shall hereafter be eligible to the office of superintendent of said institution during the term of [for] which he was appointed, nor within one year after his term shall have expired; and the said board and superintendent shall, on the fifteenth day of November in each year, make their report to the governor of the condition of such institution and an estimate of the several necessities of the institution for the succeeding year: provided, that whenever the fifteenth day of any month shall be Sunday, then the duties required by this act to be performed on that day may be performed on the next day or Monday.

Qualifications of superintendent, duties, etc.

SEC. 16. The superintendent of said institution shall be a person of acknowledged skill and ability, and shall sustain a good moral character. He shall have entire control of the educational, moral, and dietetic treatment of the inmates and pupils, and shall see that the several officers and employés in the institution faithfully and diligently discharge their respective duties. He shall employ or direct the employment of attendants, nurses, servants, and such other persons as he may deem necessary for the efficient and economical management of the institution, assign them their respective

places and duties. The superintendent, steward, and matron shall devote their time to the interests of the institution.

Duties of matron.

SEC. 17. The matron, under the direction of the superintendent, and not otherwise, shall have the general supervision of the domestic arrangements of the institution, and do what she can to promote the comfort and welfare of its inmates.

Compensation of officers, employés, etc.

SEC. 18. The superintendent shall receive a compensation for his said services, the sum of ten hundred dollars ($1000) a year; the steward eight hundred dollars ($800) a year; the matron three hundred dollars ($300) a year; the physician five hundred dollars ($500) a year; the matrons of cottages twenty-five dollars ($25) per month; superintendent of instructions nine hundred dollars ($900) a year; school teachers twenty-five dollars ($25) per month; seamstresses fourteen dollars ($14) per month. Said salaries shall be paid by the superintendent in monthly installments, and receipts taken, and the several amounts carried into the monthly accounts of the superintendent.

Treasurer of state may advance fund.

SEC. 19. The treasurer of state may, from time to time, advance to the superintendent, on his own order, approved by a majority of the trustees, on a warrant from the auditor of state, a sum not exceeding three thousand dollars, to meet current expenses; and he shall account for the whole sum of three thousand dollars before another order is approved.

SEC. 20. For all debts due said institution, an action may be maintained in the name of the board of trustees of the institution.

Penalty for converting property of state by officer of institution.

SEC. 21. Any trustee, superintendent, physician, steward, or matron, who shall conceal or convert to his or her own use any money or other property, of a value above thirty-five dollars, belonging to said institution, or belonging to the state of Ohio, or who shall cheat or attempt to cheat, or collude with any other person to cheat or defraud such institution or the state of Ohio in any manner whatever, shall be deemed guilty of a misdemeanor, and on conviction thereof before the proper court, shall be imprisoned in the penitentiary and kept at hard labor, not more than ten years, nor less than one year. And any trustee, superintendent, physician, steward, or matron, who shall be directly or indirectly interested in any contract for or purchase of any land, building material, or any article of furniture, supply, or provisions for the use of said institution, shall, on conviction thereof before the proper court, be punished by imprisonment in the penitentiary at hard labor, not less than one nor more than ten years.

SEC. 22. That the act entitled an act to regulate the Ohio soldiers' and sailors' orphans' home, located at Xenia, and to repeal certain acts therein named, passed March 14, 1876,

(O. L., v. 73, p. 26), and all acts or parts of acts inconsistent with the provisions of this act, be and the same is [are] hereby repealed. Repeals.

SEC. 23. That this act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 13, 1878.

[Senate Bill No. 115.]

AN ACT

To revise and consolidate the laws relating to civil procedure in courts of common pleas and superior courts, in district courts on appeal, and also the laws relating to procedure in error, mandamus, and quo warranto.

Be it enacted by the General Assembly of the State of Ohio:

TITLE I.

PROCEDURE IN THE COURTS OF COMMON PLEAS AND SUPERIOR COURTS, AND IN DISTRICT COURTS ON APPEAL.

DIVISION I. GENERAL AND PRELIMINARY PROVISIONS.
DIVISION II. COMMENCEMENT OF ACTIONS—JURISDICTION—ISSUE.
DIVISION III. TRIAL.
DIVISION IV. JUDGMENT.
DIVISION V. ENFORCEMENT OF JUDGMENT.
DIVISION VI. PROVISIONAL REMEDIES.
DIVISION VII. SPECIAL PROCEEDINGS.
DIVISION VIII. REPEALS.

DIVISION I. GENERAL AND PRELIMINARY PROVISIONS.

CHAPTER 1. PROVISIONS PRELIMINARY AND MISCELLANEOUS.
CHAPTER 2. SPECIFIC DUTIES OF CERTAIN OFFICERS.

CHAPTER 1.

PROVISIONS PRELIMINARY AND MISCELLANEOUS.

SECTION
1. Interpretation of words.
2. Construction of part three.
3. Power of deputies.
4. Form of oath.
5. How time computed.
6. Justification of sureties.
7. Qualification of sureties.
8. Provisions concerning process.
9. When publication may be made in another county.
10. When special provisions shall govern.

Interpretation of words.

SECTION 1. In the interpretation of part three of this revision, unless the context shows that another sense was intended, the word "person" includes a private corporation; "writing" includes printing; "oath" includes affirmation; "insane" and "lunatic" include every species of mental deficiency or derangement; "bond" includes an undertaking; "and" may be read "or," and "or" read "and," if the sense requires it; words in the present include a future tense, and in the masculine gender include the feminine and neuter genders; words in the plural include the singular, and in the singular include the plural number; but this enumeration shall not be construed to require a strict construction of other general words in this part.

Construction of part three.

SEC. 2. The provisions of this part, and all proceedings under it, shall be liberally construed, in order to promote its object, and assist the parties in obtaining justice; and the rule of the common law, that statutes in derogation thereof must be strictly construed, has no application to this part; but this section shall not be so construed as to require a liberal construction of provisions affecting personal liberty, relating to amercement, or of a penal nature. [Civil Code, § 2, S. & C. 940.]

Power of deputies.

SEC. 3. A duty enjoined by statute upon a ministerial officer, and an act permitted to be done by him, may be performed by his lawful deputy. [Civil Code, § 595, S. & C. 1130.]

Form of oath.

SEC. 4. A person may be sworn in any form he deems binding on his conscience. [Civil Code, §§ 331, 596, S. & C. 1040, 1130.]

How time computed.

SEC. 5. Unless otherwise specially provided, the time within which an act is required by law to be done shall be computed by excluding the first day and including the last; and if the last be Sunday, it shall be excluded. [Civil Code, § 597, S. & C. 1130.]

Justification of sureties.

SEC. 6. A court or officer, authorized by law to approve a surety, may require such person to testify, orally or in writing, touching his sufficiency; but this shall not, in itself, exonerate the officer in an action for taking insufficient surety. [Civil Code, § 599, S. & C. 1130.]

SEC. 7. The sureties must be residents of this state, and worth, in the aggregate, double the sum to be secured, be-

yond the amount of their debts, and have property liable to execution in this state equal to the sum to be secured. [Civil Code, § 600, S. & C. 1130.] Qualification of sureties.

SEC. 8. Process shall be under the seal of the court from which it issues, be styled "The State of Ohio, —— County," be signed by the clerk, and bear date the day it is actually issued. [Civil Code, § 581, S. & C. 1128.] Provisions concerning process.

SEC. 9. When it is provided by statute that a notice shall be published in a newspaper, and no such paper is published in the county or other place mentioned, or, if such paper is published there, and the publisher refuse, on tender of his usual charge for a similar notice, to insert the same in his newspaper, then a publication in a newspaper of general circulation in the county or other place mentioned shall be sufficient. When publication may be made in another county.

SEC. 10. Where in this revision special provision is made as to service, pleadings, competency of witnesses, or in any other respect, inconsistent with the general provisions in this title, the special provision shall govern, unless it appear that the provisions are cumulative. When special provisions shall govern.

CHAPTER 2.

SPECIFIC DUTIES OF CERTAIN OFFICERS.

SECTION
1. Books to be kept by clerk.
2. Entries on appearance docket, and their effect.
3. Writs to issue on precipe.
4. Clerk to file and preserve papers.
5. Indorsement of papers.
6. Clerk to keep books and make records.
7. Record of orders out of court.
8. Provisions applicable to all clerks.
9. General provisions as to duties of clerks.
10. Sheriff to indorse on writ time of its receipt.
11. When process directed to coroner, or other person.
12. When and how person appointed to serve process.
13. Sheriff may adjourn court from day to day.
14. General duties of sheriff.

SECTION 1. The clerk of the court of common pleas shall keep at least five books, to be called the appearance docket, trial docket, journal, record, and execution docket. [Civil Code, § 304, S. & C. 1034.] Books to be kept by clerk.

SEC. 2. He shall enter on the appearance docket, at the time of the commencement of an action or proceeding, the names of the parties in full, with names of counsel, and forthwith index the case, direct and reverse, in the name of each plaintiff and defendant; enter, at the time it occurs, under the case so docketed, the issue of the summons, or other mesne process or order, and the filing of each paper; and he shall record in full the return on such writ or order, with the date of its return to the court, which entry shall Entries on appearance docket, and their effect.

be evidence of such service. [Civil Code, §§ 305, 587, S. & C. 1030, 1129.]

Writs to issue on precipe.

SEC. 3. All writs and orders for provisional remedies, and process of every kind, shall be issued by the clerks of the several courts; but before they are issued, a precipe shall be filed with the clerk, demanding the same. [Civil Code, § 584, S. & C. 1129.]

Clerk to file and preserve papers.

SEC. 4. The clerk shall file together, and carefully preserve in his office, all papers delivered to him for that purpose, in every action or proceeding. [Civil Code, § 585, S. & C. 1129.]

Indorsement of papers.

SEC. 5. He shall indorse upon ever paper filed with him, the day of filing it; and upon every order for a provisional remedy, and upon every undertaking given under the same, the day of its return to his office. [Civil Code, § 586, S. & C. 1129.]

Clerk to keep books and make records.

SEC. 6. He shall keep the journals, records, books, and papers appertaining to the court, and record its proceedings. [Civil Code, § 588, S. & C. 1129.]

Record of orders out of court.

SEC. 7. Orders made out of court shall be forthwith entered by him in the journal of the court, in the same manner as orders made in term. [Civil Code, § 510, S. & C. 1099.]

Provisions applicable to all clerks.

SEC. 8. The provisions prescribing the duties of clerks of the court of common pleas shall, so far as they are applicable, apply to the clerks of other courts of record. [Civil Code, § 589, S. & C. 1129.]

General provisions as to duties of clerks.

SEC. 9. The clerk of each of the courts shall exercise the powers and perform the duties conferred and imposed upon him by statute and by the common law. In the performance of his duties he shall be under the direction of his court. [Civil Code, § 590, S. & C. 1129.]

SHERIFF.

Sheriff to indorse on writ time of its receipt.

SEC. 10. The sheriff shall indorse upon every writ or order the day and hour it was received by him. [Civil Code, § 591, S. & C. 1130.]

When process directed to coroner, or other person.

SEC. 11. Process, in an action wherein the sheriff is a party, or is interested, shall be directed to the coroner. If both these officers are interested, the process shall be directed to, and executed by, a person appointed by the court or judge. [Civil Code, § 582, S. & C. 1128.]

When and how person appointed to serve process.

SEC. 12. The court or judge may, for good cause, appoint a person to serve a particular process or order, who shall have the same power to execute it which the sheriff has. The person may be appointed on the motion of the party obtaining the process or order, and the return must be verified by affidavit. He shall be entitled to the fees allowed to the sheriff for similar services. [Civil Code, § 583, S. & C. 1128.]

SEC. 13. If the judge of a court having but one judge, or

if a quorum of the judges of any court having two or more judges, fail to attend at the time and place appointed for holding the court, the sheriff shall adjourn the court from day to day, until the single judge attends, or a quorum is convened; but if the judge or judges be not present within two days after the first day of the term, the court shall stand adjourned for the term. [Civil Code, § 593, S. & C. 1130.] Sheriff may adjourn court from day to day.

SEC. 14. He shall execute every summons, order, or other process, return the same as required by law, and exercise the powers and perform the duties conferred upon him by statute and by the common law. [Civil Code, §§ 592–4, S. & C. 1130, S. & S. 572.] General duties of sheriff.

DIVISION 2. COMMENCEMENT OF ACTIONS — JURISDICTION — ISSUE.

CHAPTER 1. FORM OF ACTION.
CHAPTER 2. TIME OF COMMENCING ACTIONS.
CHAPTER 3. PARTIES TO ACTIONS.
CHAPTER 4. JOINDER OF ACTIONS.
CHAPTER 5. WHERE ACTION TO BE BROUGHT.
CHAPTER 6. JURISDICTION BY SUMMONS, PUBLICATION, OR APPEARANCE.
CHAPTER 7. PLEADINGS.

CHAPTER 1.

FORM OF ACTION.

SECTION
1. One form of action.
2. Parties, how designated.
3. Feigned issue abolished—substitute therefor.

SECTION 1. There shall be but one form of action, which shall be known as a civil action. [Civil Code, § 3, S. & C. 941.] One form of action.

SEC. 2. In such action the party complaining shall be known as the plaintiff, and the adverse party as the defendant. [Civil Code, § 4, S. & C. 941.] Parties, how designated.

SEC. 3. There can be no feigned issue; but a question of fact, not put in issue by the pleadings, may be tried by a jury, upon an order for the trial stating the question of fact to be tried; and such order is the only authority necessary for a Feigned issue abolished—substitute therefor.

trial; or such question may be referred in the same way one or more persons. [Civil Code, § 5, S. & C. 941.]

CHAPTER 2.

TIME OF COMMENCING ACTION.

SUBDIVISION I. *Actions in general.—Abatement.*
SUBDIVISION II. *Actions concerning real property.*
SUBDIVISION III. *Other actions.*
SUBDIVISION IV. *General provisions.*

SUBDIVISION I.

SECTION
1. To what cases this chapter does not apply.
2. What causes of action survi
3. Special limitations saved.

SUBDIVISION II.

4. Limited to twenty-one years.
5. Saving to persons under di bility.

SUBDIVISION III.

6. How limited.
7. Within fifteen years.
8. Within six years.
9. Within four years.
10. Within one ye. r.
11. Actions on official and otl bonds.
12. For other relief.
13. Rights saved.

SUBDIVISION IV.

14. When action deemed com- menced.
15. When attempt equivalent to commencement.
16. As to persons under disability.
17. If barred at place of contra barred here.
18. Saving in case of rever etc.
19. New promise, etc., to be writing.

SUBDIVISION I. ACTIONS IN GENERAL.—ABATEMENT.

To what cases this chapter does not apply.

SECTION 1. This chapter shall not apply to actio already commenced, nor to cases where the right of acti has already accrued; but the statutes in force when the tion accrued shall be applicable to such cases, according the subject of the action, and without regard to the for nor shall this chapter apply in the case of a continui and subsisting trust, nor to an action by a vendee of r property, in possession thereof, to obtain a conveyance of [Civil Code, § 6, S. & C. 941.]

What causes of action survive.

SEC. 2. In addition to the causes of action which survi at common law, causes of action for mesne profits, or for injury to real or personal estate, or for any deceit or frau shall also survive; and the action may be brought notwi standing the death of the person entitled or liable to t same. [Civil Code, § 398, S. & C. 1058.]

Special limitations saved.

SEC. 3. Civil actions can only be commenced within the periods prescribed in this chapter, after the cause of action accrues; but where a different limitation is prescribed by statute, that shall govern. [Civil Code, § 8, S. & C. 943.]

SUBDIVISION II. ACTIONS CONCERNING REAL PROPERTY.

Limited to twenty-one years.

SEC. 4. An action for the recovery of the title or possession of lands, tenements, or hereditaments, can only be brought within twenty-one years after the cause of such action accrues. [Civil Code, § 9, S. & C. 944.]

Saving to persons under disability.

SEC. 5. If a person entitled to commence such action is, at the time his right or title first descends or accrues, within the age of twenty-one years, a married woman, insane, or imprisoned, such person may, after the expiration of twenty-one years from the time his right or title first descended or accrued, bring such action within ten years after such disability is removed, and at no time thereafter. [Civil Code, § 10, S. & C. 945.]

SUBDIVISION III. OTHER ACTIONS.

How limited.

SEC. 6. Civil actions other than for the recovery of real property can only be brought within the following periods, after the cause of the action accrues. [Civil Code, § 12, S. & C. 947.]

Within fifteen years.

SEC. 7. Within fifteen years:

An action upon a specialty, or an agreement, contract, or promise in writing. [Civil Code, § 13, S. & C. 948.]

Within six years.

SEC. 8. Within six years:

An action upon a contract not in writing, either express or implied.

An action upon a liability created by statute, other than a forfeiture or penalty. [Civil Code, § 14, S. & C. 948.]

Within four years.

SEC. 9. Within four years:

An action for trespass upon real property.

An action for the recovery of personal property, or for taking, detaining, or injuring the same; but in an action for the wrongful taking of personal property, the cause of action shall not be deemed to have accrued until the wrongdoer is discovered.

An action for an injury to the rights of the plaintiff, not arising on contract, and not hereinafter enumerated.

An action for relief on the ground of fraud; but the cause of action in such case shall not be deemed to have accrued until the discovery of the fraud. [Civil Code, § 15, S. & S. 541.]

Within one year.

SEC. 10. Within one year:

An action for libel, slander, assault, battery, malicious prosecution, or false imprisonment.

An action upon a statute for a penalty or forfeiture; but where a different limitation is prescribed in the statute by which the remedy is given, the action may be brought within the period so limited. [Civil Code, § 16, S. & C. 949.]

trial; or such question may be referred in the same way to one or more persons. [Civil Code, § 5, S. & C. 941.]

CHAPTER 2.

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16. As to persons under disability.
17. If barred at place of contract, barred here.
18. Saving in case of reversal, etc.
19. New promise, etc., to be in writing.

SUBDIVISION I. ACTIONS IN GENERAL.—ABATEMENT.

To what cases this chapter does not apply.

SECTION 1. This chapter shall not apply to actions already commenced, nor to cases where the right of action has already accrued; but the statutes in force when the action accrued shall be applicable to such cases, according to the subject of the action, and without regard to the form; nor shall this chapter apply in the case of a continuing and subsisting trust, nor to an action by a vendee of real property, in possession thereof, to obtain a conveyance of it. [Civil Code, § 6, S. & C. 941.]

What causes of action survive.

SEC. 2. In addition to the causes of action which survive at common law, causes of action for mesne profits, or for an injury to real or personal estate, or for any deceit or fraud, shall also survive; and the action may be brought notwithstanding the death of the person entitled or liable to the same. [Civil Code, § 398, S. & C. 1058.]

Special limitations saved.

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SEC. 4. An action for the recovery of the title or possession of lands, tenements, or hereditaments, can only be brought within twenty-one years after the cause of such action accrues. [Civil Code, § 9, S. & C. 944.]

Saving to persons under disability.

SEC. 5. If a person entitled to commence such action is, at the time his right or title first descends or accrues, within the age of twenty-one years, a married woman, insane, or imprisoned, such person may, after the expiration of twenty-one years from the time his right or title first descended or accrued, bring such action within ten years after such disability is removed, and at no time thereafter. [Civil Code, § 10, S. & C. 945.]

SUBDIVISION III. OTHER ACTIONS.

How limited.

SEC. 6. Civil actions other than for the recovery of real property can only be brought within the following periods, after the cause of the action accrues. [Civil Code, § 12, S. & C. 947.]

SEC. 7. Within fifteen years:

Within fifteen years.

An action upon a specialty, or an agreement, contract, or promise in writing. [Civil Code, § 13, S. & C. 948.]

SEC. 8. Within six years:

Within six years.

An action upon a contract not in writing, either express or implied.

An action upon a liability created by statute, other than a forfeiture or penalty. [Civil Code, § 14, S. & C. 948.]

SEC. 9. Within four years:

Within four years.

An action for trespass upon real property.

An action for the recovery of personal property, or for taking, detaining, or injuring the same; but in an action for the wrongful taking of personal property, the cause of action shall not be deemed to have accrued until the wrongdoer is discovered.

An action for an injury to the rights of the plaintiff, not arising on contract, and not hereinafter enumerated.

An action for relief on the ground of fraud; but the cause of action in such case shall not be deemed to have accrued until the discovery of the fraud. [Civil Code, § 15, S. & S. 541.]

SEC. 10. Within one year:

Within one year.

An action for libel, slander, assault, battery, malicious prosecution, or false imprisonment.

An action upon a statute for a penalty or forfeiture; but where a different limitation is prescribed in the statute by which the remedy is given, the action may be brought within the period so limited. [Civil Code, § 16, S. & C. 949.]

Actions on official and other bonds.

SEC. 11. An action upon the official bond or under of an officer, assignee, trustee, executor, administra guardian, or upon a bond or undertaking given in pur of a statute, can only be brought within ten years af cause of action accrues; but this section shall be sub the qualification in section three of this chapter. Code, § 17, S. & C. 949.]

For other relief.

SEC. 12. An action for relief not hereinbefore pr for can only be brought within ten years after the c action accrues. [Civil Code, § 18, S. & C. 949.]

Rights saved.

SEC. 13. If a person, entitled to bring any actio tioned in this subdivision, except for a penalty or for is, at the time the cause of action accrued, within the twenty-one years, a married woman, insane, or impr every such person shall be entitled to bring such within the respective times limited by this chapte such disability is removed. [Civil Code, § 19, S. & C

SUBDIVISION IV. GENERAL PROVISIONS.

When action deemed commenced.

SEC. 14. An action shall be deemed commenced, the meaning of this chapter, as to each defendant, date of the summons which is served on him, or on a fendant who is a joint contractor, or otherwise united terest with him; and where service by publication is the action shall be deemed commenced at the date of t publication, if the publication be regularly made. Code, § 20, S. & C. 949.]

When attempt equivalent to commencement.

SEC. 15. An attempt to commence an action sh deemed equivalent to the commencement thereof, with meaning of this chapter, when the party diligently e ors to procure a service; but such attempt must be fo by service within sixty days. [Civil Code, § 20, S 949.]

As to persons under disability.

SEC. 16. If, when a cause of action accrues against son, he is out of the state, or has absconded, or con himself, the period limited for the commencement action shall not begin to run until he comes into the or while he is so absconded or concealed; and if, af cause of action accrues, he depart from the state, or a or conceal himself, the time of his absence or conce shall not be computed as any part of the period which the action must be brought. [Civil Code, § 2 C. 949.]

If barred at place of contract, barred here.

SEC. 17. If, by the laws of the state or country wh cause of action arose, the action is barred, it is also ba this state. [Civil Code, § 22, S. & C. 950.]

Saving in case of reversal, etc.

SEC. 18. If, in an action commenced in due time, ment for the plaintiff be reversed, or the plaintiff fail wise than upon the merits, and the time limited for th mencement of such action has, at the date of such r or failure, expired, the plaintiff, or, if he die, and the

of action survive, his representatives, may commence a new action within one year after such date; and this provision shall apply to any claim asserted in any pleading by a defendant. [Civil Code, § 23, S. & C. 950.]

New promise, etc., to be in writing.

SEC. 19. When payment has been made upon any demand founded on contract, or a written acknowledgment thereof, or promise to pay the same, has been made and signed by the party to be charged, an action may be brought thereon within the time herein limited, after such payment, acknowledgment, or promise. [Civil Code, § 24, S. & C. 951.]

CHAPTER 3.

PARTIES TO ACTIONS.

SECTION
1. General rule as to plaintiff.
2. Plaintiff in suit on bond.
3. How executor, trustee, etc., may sue.
4. How married women may sue or be sued.
5. Right of wife to defend.
6. How insane person and infant may sue.
7. Liability for cost in such suit.
8. How insane person to defend.
9. Duties and compensation of guardian ad litem and trustee.
10. How insanity of a party determined.
11. Guardian for suit.
12. How appointed.
13. Joinder of plaintiffs.
14. Joinder of defendants.
15. When party refusing to join as plaintiff made defendant.
16. When one or more may sue or defend for all.
17. How parties severally liable may be sued.
18. How parties by initial letter may be sued.
19. Partnership may sue or be sued by its name.
20. When a party marries, dies, or transfers an interest.
21. When proper parties are not all before the court.
22. When a person claiming an interest made party.
23. When officer holding execution may be joined in the action.
24. Interpleader.
25. When officer may have benefit of preceding section.
26. When plaintiff in execution may be substituted for officer.

General rule as to plaintiff.

SECTION 1. An action must be prosecuted in the name of the real party in interest, except as provided in the second and third sections of this chapter; but where a party asks that he may recover by virtue of an assignment, the right of set-off, counterclaim, and defense, as allowed by law, shall not be impaired. [Civil Code, §§ 25, 26, S. & C. 951–953.]

Plaintiff in suit on bond.

SEC. 2. The rule prescribed in the last section may be so applied, when a person forfeits his bond, or renders his sureties liable, that any person injured thereby, or who is by law entitled to the benefit of the security, may bring an action thereon, in his own name, against the person and his sureties, to recover the amount to which he is entitled by reason of the delinquency, which action may be prosecuted on a certified copy of the bond; and the custodian shall deliver such copy to any person claiming to be so injured, on tender of

the proper fee; but the provisions of this section as to the form of the action shall not be imperative, where provision is otherwise made by law; nor shall a judgment for one delinquency preclude the same or another party from an action on the same instrument for another delinquency. [Civil Code, §§ 566, 567, S. & C. 1123, 1124.

How executor, trustee, etc., may sue.

SEC. 3. An executor, administrator, guardian, trustee of an express trust, a person with whom, or in whose name, a contract is made for the benefit of another, or a person expressly authorized by statute, may bring an action without joining with him the person for whose benefit it is prosecuted; and officers may sue and be sued in such name as is authorized by law. [Civil Code, § 27, S. & C. 953.]

How married woman may sue or be sued.

SEC. 4. A married woman can not prosecute or defend by next friend, but her husband must be joined with her, unless the action concerns her separate property, is upon her written obligation, concerns business in which she is a partner, is brought to set aside a deed or will, or is between her and her husband. [Civil Code, § 28, 71 v. 47.]

Right of wife to defend.

SEC. 5. When husband and wife are sued together, the wife may defend for her own right; and if the husband neglect to defend, she may also defend for his right. [Civil Code, § 29, S. & C. 954.]

How insane person and infant may sue.

SEC. 6. The action of an insane person must be brought by his guardian. The action of an infant must be brought by his guardian or next friend; and when the action is brought by his next friend, the court may dismiss it, if it is not for the benefit of the infant, or substitute the guardian, or any person, as the next friend. [Civil Code, § 30, S. & C. 954.]

Liability for costs in such suit.

SEC. 7. The next friend is liable for the costs of the action brought by him, and, when a next friend is insolvent, the court may, on motion, require security therefor. [Civil Code, § 31, S. & C. 954.]

How insane person to defend.

SEC. 8. The defense of an insane person must be by his legally appointed guardian, or, if there be no guardian, or the guardian have an adverse interest, by a trustee for the suit, appointed by the court; and if the insanity of a party be discovered, or he become insane, after the action is brought, it shall be thereafter prosecuted or defended by his guardian, or his trustee appointed as provided in this section. [51 v. 473, § 7, S. & C. 382.]

Duties and compensation of guardian ad litem and trustee.

SEC. 9. The court shall require a guardian ad litem, or a trustee appointed under the last section, faithfully to discharge his duty; and upon his failure so to do, may remove him, and appoint another in his stead; and the court may fix a compensation for his services, which shall be taxed in the costs against the minor or insane person. [51 v. 473, § 8, S. & C. 382.]

How insanity of a party determined.

SEC. 10. When the insanity of a party is not manifest to the court, and the fact of insanity is disputed by a party or

an attorney in the action, the court may try the question, or impanel a jury to try the same. [51 v. 473, § 7, S. & C. 382.]

Guardian for suit.

SEC. 11. The defense of an infant must be by a guardian for the suit, who may be appointed by the court in which the action is prosecuted, or by a judge thereof, or by a probate judge. [Civil Code, § 32, S. & C. 954.]

How appointed.

SEC. 12. The appointment may be made upon the application of the infant, if, being of the age of fourteen years, he apply within twenty days after the return of the summons, or service by publication; and in case of his being under said age, or of his neglect so to apply, the appointment may be made on the application of the plaintiff, or a friend of the infant; but the appointment can not be made until after service of summons, or publication. [Civil Code, §§ 32, 33, S. & C. 955.]

Joinder of plaintiff.

SEC. 13. All persons having an interest in the subject of the action, and in obtaining the relief demanded, may be joined as plaintiffs, except as otherwise provided. [Civil Code, § 34, S. & C. 955.]

Joinder of defendant.

SEC. 14. Any person may be made a defendant who has or claims an interest in the controversy adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of a question involved therein. [Civil Code, § 35, S. & C. 955.]

When party refusing to join as plaintiff made defendant.

SEC. 15. Parties who are united in interest must be joined, as plaintiffs or defendants; but if the consent of one who should have been joined as plaintiff can not be obtained, or, if he is insane, and the consent of his guardian can not be obtained, or he has no guardian, and that fact is stated in the petition, he may be made a defendant. [Civil Code, § 36, S. & C. 956.]

When one or more may sue or defend for all.

SEC. 16. When the question is one of a common or general interest of many persons, or when the parties are very numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all. [Civil Code, § 37, S. & C. 957.]

How parties severally liable may be sued.

SEC. 17. One or more of the persons severally liable on an instrument may be included in the same action thereon. [Civil Code, § 38, S. & C. 957.]

How parties by initial letter may be sued.

SEC. 18. Parties to a written instrument by initial letter, or a contraction of the name, may be so designated in an action thereon. [51 v. 397, S. & C. 1139.]

Partnership may sue or be sued by its name.

SEC. 19. A partnership formed for the purpose of carrying on a trade or business in this state, or holding property therein, may sue or be sued by the usual or ordinary name which it has assumed, or by which it is known; and in such case it is not necessary to allege or prove the names of the individual members thereof. [44 v. 66, § 1, S. & C. 1138.]

When a party marries, dies, or transfers an interest.

SEC. 20. Upon the marriage of a female party, the action does not abate; but if it is necessary that the husband be joined therein, he may be made a party with his wife. Upon the disability of a party, the court may allow the action to

continue by or against his representative, or successor in interest. Upon any other transfer of interest, the action may be continued in the name of the original party, or the court may allow the person to whom the transfer is made to be substituted for him. [Civil Code, § 39, S. & C. 958.]

When proper parties are not all before the court.

SEC. 21. The court may determine any controversy between parties before it, when it can be done without prejudice to the rights of others, or by saving their rights; but when a determination of the controversy cannot be had without the presence of other parties, the court may order them to be brought in, or dismiss the action without prejudice. [Civil Code, § 40, S. & C. 958.]

When a person claiming an interest made party.

SEC. 22. In an action for the recovery of real or personal property, a person claiming an interest in the property may, on his application, be made a party. [Civil Code, § 41, S. & C. 958.]

When officer holding execution may be joined in the action.

SEC. 23. An officer holding an execution may be joined in an action to restrain the collection of the same in the county in which he resides, with the person for whose benefit the writ issued, when such person is a non-resident of the state, or has left the same to avoid the service of a summons or order of injunction, or so conceals himself that process cannot be served upon him; and service may be made against such person by publication, as in other cases. [56 v. 93, § 1, S. & C. 1172.]

Interpleader.

SEC. 24. Upon affidavit of a defendant before answer, in an action upon contract, or for the recovery of personal property, that a third party, without collusion with him, has or makes a claim to the subject of the action, and that he is ready to pay or dispose of the same as the court may direct, the court may make an order for the safe-keeping, or for the payment or deposit in court, or delivery of the subject of the action to such person as it may direct, and also an order requiring such third party to appear in a reasonable time, and maintain or relinquish his claim against the defendant. If such third party, having been served with a copy of the order, by the sheriff, or such other person as the court may direct, fail to appear, the court may declare him barred of all claim in respect to the subject of the action, against the defendant therein. If such third party appear, he shall be allowed to make himself defendant in the action, in lieu of the original defendant, who shall be discharged from all liability to either of the other parties in respect to the subject of the action, upon his compliance with the order of the court for the payment, deposit, or delivery thereof. [Civil Code, § 42, S. & C. 958.]

When officer may have benefit of preceding sections.

SEC. 25. An officer, against whom an action is brought to recover personal property taken by him on execution, or for the proceeds of such property sold by him, may, upon exhibiting to the court the process under which he acted, with his affidavit that the property was taken or sold by him under such process, have the benefit of the provisions

of the last section, against the party in whose favor the execution issued. [Civil Code, § 43, S. & C. 958.]

When plaintiff in execution may be substituted for officer.

SEC. 26. In an action against an officer for the recovery of property taken under an execution, the court may, upon application of the defendant, and of the party in whose favor the execution issued, permit the latter to be substituted as the defendant, security for the costs having been given. [Civil Code, § 44, S. & C. 958.]

CHAPTER 4.

JOINDER OF ACTIONS.

SECTION
1. What causes of action may be joined.
2. Must affect all the parties.
3. In actions to enforce liens.

What causes of action may be joined.

SECTION 1. The plaintiff may unite several causes of action in the same petition, whether they be such as have heretofore been denominated legal or equitable, or both, when they are included in either of the following classes:

1. The same transaction, or transactions connected with the same subject of action.
2. Contracts, express or implied.
3. Injuries to person and property, or either.
4. Injuries to character.
5. Claims to recover the possession of personal property, with or without damages for the withholding thereof.
6. Claims to recover real property, with or without damages for the withholding thereof, the rents and profits of the same, and the partition thereof.
7. Claims against a trustee, by virtue of a contract, or by operation of law. [Civil Code, § 80, S. & C. 967.]

Must affect all the parties.

SEC. 2. The causes of action so united must not require different places of trial, and, except as otherwise provided, must affect all the parties to the action. [Civil Code, § 81, S. & C. 968.]

In actions to enforce liens.

SEC. 3. In an action to foreclose a mortgage given to secure the payment of money, or to enforce a specific lien for money, the plaintiff may also ask in his petition a judgment for the money claimed to be due; and such proceedings shall be had, and judgment rendered thereon, as in a civil action for the recovery of money only. [61 v. 9, § 1, S. & S. 575.]

CHAPTER 5.

WHERE ACTION TO BE BROUGHT.

SECTION
1. When to be brought where property situated.
2. When may be brought where part of the property situated.
3. In actions for specific performance.
4. Where the cause of action arose.
5. Against domestic corporations.
6. Against railroad and stage companies.
7. Against turnpike companies.
8. When this chapter does not apply.
9. Further provisions as to non-residents.
10. General rule as to other actions; exception as to executors, etc.
11. Change of venue.
12. Change of venue in suit by or against a corporation.
13. Privilege of members and officers of the general assembly.

When to be brought where property situated.

SECTION 1. Actions for the following causes must be brought in the county in which the subject of the action is situated, except as provided in the next two sections:

1. For the recovery of real property, or of an estate or interest therein.

2. For the partition of real property.

3. For the sale of real property under a mortgage, lien, or other incumbrance or charge [Civil Code, § 45, S. & C. 959.]

When may be brought where part of the property situated.

SEC. 2. When the property is situated in more than one county, the action may be brought in either; but in actions to recover real property, this can only be done where the property is an entire tract. [Civil Code, § 46, S. & C. 959.]

In actions for specific performance.

SEC. 3. An action to compel the specific performance of a contract of sale of real estate may be brought in the county where the defendants, or any of them, reside. [Civil Code, § 46, S. & C. 959.]

Where the cause of action arose.

SEC. 4. Actions for the following causes must be brought in the county where the cause, or some part thereof, arose:

1. For the recovery of a fine, forfeiture, or penalty imposed by a statute, except that, when it is imposed for an offense committed on a river, or other water-course, or a road, which is the boundary of the state, or of two or more counties, the action may be brought in any county bordering on such river, water-course, or road, and opposite to the place where the offense was committed.

2. Against a public officer, for an act done by him in virtue or under color of his office, or for a neglect of his official duty.

3. On the official bond or undertaking of a public officer. [Civil Code, § 47, S. & C. 960.]

Against domestic corporations.

SEC. 5. An action other than one of those mentioned in the first four sections of this chapter, against a corporation created under the laws of this state, may be brought in the county in which such corporation is situated, or has or had its principal office or place of business; but if such corpora-

tion is an insurance company, the action may be brought in the county where the cause of action, or some part thereof, arose. [Civil Code, § 48, 74 v. 29.]

Against railroad and stage companies.

SEC. 6 An action against the owner or lessee of a line of mail stages, or other coaches, for an injury to person or property upon the road or line, or upon a liability as carrier, and an action against a railroad company, may be brought in any county through or into which such road or line passes. [Civil Code, § 49, S. & S. 542]

Against turnpike companies.

SEC. 7. An action other than one of those mentioned in the first four sections of this chapter, against a turnpike road company, may be brought in any county in which any part of the road lies. [Civil Code, § 50, S. & C. 960.]

When this chapter does not apply.

SEC. 8. When the charter of a corporation created under the laws of this state prescribes the place where suit must be brought, that provision shall govern. [Civil Code, § 51, S. & C. 960.]

Further provisions as to non-residents.

SEC. 9. An action other than one of those mentioned in the first four sections of this chapter, against a non-resident of this state, or a foreign corporation, may be brought in any county in which there is property of, or debts owing to, the defendant, or where such defendant is found; but if the defendant is a foreign insurance company, the action may be brought in a county where the cause, or some part thereof, arose. [Civil Code, § 52, S. & C. 960.]

General rule as to other actions; exceptions as to executors, etc.

SEC. 10. Every other action must be brought in the county in which a defendant resides or may be summoned, except actions against an executor, administrator, guardian, or trustee, which may be brought in the county wherein he was appointed or resides, in which cases summons may issue to any county. [Civil Code, § 53; 70 v. 138.]

Change of venue.

SEC. 11. When it appears to the court that a fair and impartial trial cannot be had in the county where the suit is pending, the court may change the place of trial to some adjoining county; and if the application is made in the superior court, the change shall be made to another superior court, or to the court of common pleas of an adjoining county. [Civil Code, § 54, S. & C. 961; 54 v. 10, § 1, S. & C. 392.]

Change of venue in suit by or against a corporation.

SEC. 12. When a corporation having more than fifty stockholders is a party in an action pending in a county in which the corporation keeps its principal office, or transacts its principal business, if the opposite party makes affidavit that he can not, as he believes, have a fair and impartial trial in that county, and his application is sustained by the several affidavits of five credible persons residing in such county, the court shall change the venue to some adjoining county most convenient for both parties. [50 v. 100, S. & C. 1140.]

Privilege of members and officers of the general assembly.

SEC. 13. A member of the senate or house of representatives, or an officer of either branch of the general assembly, shall be privileged from answering to any suit which may be instituted against him in a county other than the one in which he resides, upon a cause of action which accrued ten

days before the first day of the session of the general assembly of which he is an officer or a member; and all proceedings in actions to which any such person is a party shall be stayed during such session, and during the time necessarily employed in going thereto and returning therefrom. [29 v. 341, § 2, S. & C. 83; 59 v 6, § 1, S. & S. 18.]

CHAPTER 6.

JURISDICTION BY SUMMONS, PUBLICATION, OR APPEARANCE.

SUBDIVISION I. *Actual service.*

SUBDIVISION II. *Constructive service.*

SUBDIVISION I.

SECTION
1. Summons to issue on petition.
2. Precipe.
3. Requisites of summons.
4. When summons may issue to other county.
5. When summons returnable.
6. Alias writs may issue.
7. Who may serve summons.
8. Manner of service and return.
9. What equivalent to service.
10. How served upon corporation.
11. On insurance company.
12. On foreign corporation.
13. Infants, how served.

SUBDIVISION II.

14. When service by publication may be made.
15. Affidavit necessary.
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17. When service complete, and how proved.
18. Personal service out of the state.
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20. Procedure when defendants not all served.
21. Lis pendens in general.
22. Lis pendens as to suits in other counties.

SUBDIVISION I. ACTUAL SERVICE.

Summons to issue on petition.

SECTION 1. A civil action must be commenced by filing in the office of the clerk of the proper court a petition, and causing a summons to be issued thereon. [Civil Code, § 55, S. & C. 961.]

Precipe.

SEC. 2. The plaintiff shall also file with the clerk of the court a precipe, stating therein the names of the parties to the action, and demanding that a summons issue. [Civil Code, § 56, S. & C. 961.]

Requisites of summons.

SEC. 3. The summons shall be issued and signed by the clerk, and be under the seal of the court from which it is issued. Its style shall be, "The State of Ohio, —— county," and it shall be dated the day it is issued. It shall be directed to the sheriff of the county, who shall be commanded therein to notify the defendant that he has been sued, and must answer at a time stated therein, or the petition will be taken as true, and judgment rendered accordingly; and when the action is for the recovery of money only, there shall be indorsed on the writ the amount to be stated in the

precipe, for which, with interest, judgment will be taken if the defendant fail to answer. If the defendant fail to appear, judgment shall not be rendered for a larger amount, and the costs. [Civil Code, § 57, S. & C. 961.]

When summons may issue to other county.

SEC. 4. When the action is rightly brought in any county, according to the provisions of chapter five of this division, a summons may be issued to any other county, against one or more of the defendants, at the plaintiff's request; but no maker or acceptor, or, if the bill is not accepted, no drawer of an instrument for the payment of money only shall be held liable in an action thereon, except on warrant of attorney, in any county other than one in which he, or one of the joint makers, acceptors, or drawers resides or is summoned. [Civil Code, § 58, 68 v. 77.]

When summons returnable.

SEC. 5. When the time for bringing parties into court is not fixed by statute, the summons shall be returnable on the second Monday after its date; but when it is issued to any other county, it may be made returnable, at the option of the party having it issued, on the third or fourth Monday after its date. The day of the month on which it is returnable shall be stated therein. [Civil Code, § 59, S. & C. 962.]

Alias writs may issue.

SEC. 6. When a writ is returned "not summoned," other writs may be issued, until the defendant is summoned; and when defendants reside in different counties, writs may be issued to such counties at the same time. [Civil Code, § 60, S. & C. 962.]

Who may serve summons.

SEC. 7. The summons shall be served by the officer to whom it is directed, who shall indorse on the original writ the time and manner of service, or it may be served by any person not a party to the action, appointed by such officer; but the authority of such person shall be indorsed on the writ; and when the writ is served by a person appointed by the officer to whom it is directed, or when the service is made out of the state, the return shall be verified by oath. [Civil Code, § 61, S. & C. 962.]

Manner of service and return.

SEC. 8. The service shall be by delivering a copy of the summons, with the indorsements thereon, to the defendant personally, or by leaving a copy at his usual place of residence, at any time before the return day; and the return must be made at the time mentioned in the writ, and the time and manner of service shall be stated on the writ. [Civil Code, §§ 62, 63, 64, S. & C. 962.]

What equivalent to service.

SEC. 9. An acknowledgment on the back of the summons or petition, by the party sued, or the voluntary appearance of a defendant, is equivalent to service. [Civil Code, § 65, S. & C. 963.]

How served upon corporation.

SEC. 10. A summons against a corporation may be served upon the president, mayor, chairman or president of the board of directors or trustees, or other chief officer; or, if its chief officer be not found in the county, upon its cashier, treasurer, secretary, clerk, or managing agent; or, if none of the aforesaid officers can be found, by a copy left at the office

or usual place of business of such corporation, with the person having charge thereof. And if such corporation is a railroad company, whether foreign, or created under the laws of this state, and whether the charter thereof prescribes the manner and place, or either, of service of process thereon, the summons may be served upon any regular ticket or freight agent thereof, in any county in this state in which such railroad is located, or through which it passes; but if the defendant is an incorporated river transportation company, whether organized under the laws of this state or another state, the service of a summons may be upon the master or other chief officer of any of its steamboats or other craft, or upon any of its authorized ticket or freight agents, at any port where it may transact business. [Civil Code, § 66, S. & S. 542.]

On insurance company.

SEC. 11. When the defendant is an insurance company, and the action is brought in a county in which there is an agency thereof, the service may be upon the chief officer of such agency. [Civil Code, § 67, S. & C. 963.]

On foreign corporation.

SEC. 12. When the defendant is a foreign corporation, having a managing agent in this state, the service may be upon such agent. [Civil Code, § 68, S. & C. 963.]

Infants, how served.

SEC. 13. When the defendant is under the age of fourteen years, the service must be upon him, and also upon his guardian, or his father; or, if neither his guardian nor his father can be found, then upon his mother, or the person having the care of such infant, or with whom he lives; and if neither of these can be found, or if the defendant is a minor over fourteen years of age, service upon the defendant alone shall be sufficient. The manner of service may be the same as in the case of adults. [Civil Code, § 69, S. & C. 963.]

SUBDIVISION II. CONSTRUCTIVE SERVICE.

When service by publication may be made.

SEC. 14. Service may be had by publication in either of the following cases:

1. In actions under the first three sections of the last chapter, when the defendant resides out of the state, or his residence cannot be ascertained.

2. In actions to establish or set aside a will, where a defendant resides out of the state, or his residence cannot be ascertained.

3. In actions against a non-resident of this state, or a person whose place of residence cannot be ascertained; or a foreign corporation having in this state property, or debts owing to it, sought to be taken by any of the provisional remedies, or to be appropriated in any way; or a corporation incorporated under the laws of this state, which has failed to elect officers, or to appoint an agent, upon whom service of summons can be made, as provided for by section two of this chapter, and which has no place of doing business in this state.

4 In actions which relate to, or the subject of which is, real or personal property in this state, when a defendant has or claims a lien thereon, or an actual or contingent interest therein, or the relief demanded consists wholly or partly in excluding him from any interest therein, and such defendant is a non-resident of the state, or a foreign corporation, or his place of residence cannot be ascertained.

5. In actions against executors, administrators, or guardians, when the defendant has given bond as such in this state, but at the time of the commencement of the action is a non-resident of the state, or his place of residence cannot be ascertained.

6. In actions where the defendant, being a resident of this state, has departed from the county of his residence, with intent to delay or defraud his creditors, or to avoid the service of summons, or keeps himself concealed with like intent.

7. When a defendant in a petition in error has no attorney of record in this state, and is a non-resident of and absent from the same, or has left the same to avoid the service of summons in error, or so conceals himself that such process cannot be served upon him.

8. In an action or proceeding under chapter six, division four, of this title, or to impeach a judgment or order for fraud, or to obtain an order of satisfaction thereof, when a defendant is a non resident of the state.

In any such case, when the residence of a defendant is known, it must be stated in the publication; and, immediately after the first publication, the party making the service shall deliver to the clerk copies of the publication, with the proper postage, and the clerk shall mail a copy to each defendant, directed to his residence named therein, and make an entry thereof on the appearance docket. In all other cases, the party making the service, his agent or attorney, shall, before the hearing, make and file an affidavit that the residence of the defendant is unknown, and cannot, with reasonable diligence, be ascertained. [Civil Code, § 70, 74 v. 151; 64 v. 208, S. & S. 585.]

Affidavit necessary.

SEC. 15. Before service by publication can be made, an affidavit must be filed that service of a summons cannot be made within this state, on the defendant to be served by publication, and that the case is one of those mentioned in the preceding section. When such affidavit is filed, the party may proceed to make service by publication. [Civil Code, § 71, S. & C. 964.]

How publication to be made.

SEC. 16. The publication must be made six consecutive weeks, in a newspaper printed in the county where the petition is filed; or, if there be no newspaper printed in the county, then in a newspaper printed in this state, and of general circulation in such county; and if it is made in a daily newspaper, one insertion a week shall be sufficient. It must contain a summary statement of the object and prayer

of the petition, mention the court wherein it is filed, and notify the person or persons thus to be served when they are required to answer. [Civil Code, § 72, S. & C. 964; 62 v. 66, S. & S. 580.]

When service complete, and how proved.

SEC. 17. Service by publication shall be deemed complete at the date of the last publication, when made in the manner and for the time prescribed in the preceding sections; and such service shall be proved by affidavit. [Civil Code, § 73, S. & C. 964.]

Personal service out of the state.

SEC. 18. In all cases where service may be made by publication, personal service of a copy of the summons and petition may be made out of the state. [Civil Code, § 74, S. & C. 965.]

Service upon unknown heirs, etc.

SEC. 19. When an heir or a devisee of a deceased person is a necessary party, and it appears by affidavit that his name and residence are unknown to the plaintiff, proceedings against him may be had without naming him; and the court shall make an order respecting the publication of notice, but the order shall require not less than six weeks' publication. [Civil Code, § 76, S. & C. 966.]

Procedure when defendants not all served.

SEC. 20. When service has been made on one or more defendants, but not on all, the plaintiff may proceed as follows:

1. If the action is against defendants jointly indebted upon contract, he may proceed against the defendants served, unless the court otherwise direct.

2. If the action is against defendants severally liable, he may, without prejudice to his rights against those not served, proceed against the defendants served. [Civil Code, § 77, S. & C. 966.]

Lis pendens in general.

SEC. 21. When the summons has been served, or publication made, the action is pending, so as to charge third persons with notice of its pendency; and while pending, no interest can be acquired by third persons in the subject matter thereof, as against the plaintiff's title. [Civil Code, § 78, S. & C. 966.]

Lis pendens as to suits in other counties.

SEC. 22. When any part of real property, the subject matter of an action, is situated in any county or counties other than the one in which the action is brought, a certified copy of the judgment in such action must be recorded in the recorder's office of such other county or counties, before it shall operate therein as notice so as to charge third persons, as provided in the preceding section; but it shall operate as such notice, without record, in the county where it is rendered. This section shall not apply to actions or proceedings under any statute which does not require such record. [Civil Code, § 79, S. & C. 966.]

CHAPTER 7.

PLEADINGS.

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SUBDIVISION III. *Demurrer.*
SUBDIVISION IV. *Answer and cross-petition.*
SUBDIVISION V. *Reply.*
SUBDIVISION VI. *General rules.*
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SUBDIVISION I. PLEADING IN GENERAL.

What forms and rules to govern.

SECTION 1. The forms of pleading in civil actions in courts of record, and the rules by which their sufficiency shall be determined, are those prescribed in this chapter. [Civil Code, § 83, S. & C. 968.]

What pleadings are; fictions abolished, etc.

SEC. 2. The pleadings are the written statements by the parties, of the facts constituting their respective claims and defenses; all fictions therein are abolished; and the title of a cause shall not be changed in any of its stages, except when the defendant prosecutes error. [Civil Code, §§ 82, 115, 116, S. & C. 968. 984.]

What pleadings are allowed.

SEC. 3. The only pleadings allowed are—

1. Petition.
2. Demurrer.
3. Answer; which, when affirmative relief is demanded therein, may be styled cross-petition.
4. Reply. [Civil Code, § 84, S. & C. 968.]

SUBDIVISION II. PETITION.

What the petition must contain.

SEC. 4. The first pleading on the part of the plaintiff is the petition, which must contain—

1. The name of the court and the county in which the action is brought, and the names of the parties, followed by the word "Petition."
2. A statement of the facts constituting the cause of action, in ordinary and concise language.
3. A demand of the relief to which the party supposes himself entitled. If the recovery of money is demanded, the amount shall be stated; and if interest is claimed, the time for which interest is to be computed shall be also stated. [Civil Code, § 85, S. & C. 969.]

Each cause of action to be numbered.

SEC. 5. When the petition contains more than one cause of action, they shall be separately stated and numbered. [Civil Code, § 86, S. & C. 973.]

SUBDIVISION III. DEMURRER.

Causes of demurrer to petition.

SEC. 6. The defendant may demur to the petition only when it appears on its face, either—

1. That the court has no jurisdiction of the person of the defendant, or the subject of the action.
2. That the plaintiff has not legal capacity to sue.
3. That there is another action pending between the same parties, for the same cause.
4. That there is a misjoinder of parties plaintiff.
5. That there is a defect of parties, plaintiff or defendant.
6. That several causes of action are improperly joined.
7. That separate causes of action against several defendants are improperly joined.
8. That the petition does not state facts sufficient to constitute a cause of action. [Civil Code, § 87, S. & C. 973.]

When demurrer must be specific.

SEC. 7. The demurrer shall specify the grounds of objection to the petition. Unless it do so, it shall be regarded as objecting only that the petition does not state facts sufficient to constitute a cause of action, or that the court has not jurisdiction of the subject matter. [Civil Code, § 88, S. & C. 975.]

Objection may be taken by answer; when waived.

SEC. 8. When any of the defects enumerated in section six do not appear upon the face of the petition, the objection may be taken by answer; and if no objection be taken either by demurrer or answer, the defendant shall be deemed to have waived the same, except only the objection to the jurisdiction of the court, and that the petition does not state facts sufficient to constitute a cause of action. [Civil Code, § 89, S. & C. 975.]

Procedure when causes of action are misjoined.

SEC. 9. When a demurrer is sustained on the ground of misjoinder of several causes of action in a petition or answer, the court, on motion of the party who filed the pleading, shall allow him, with or without costs in its discretion, to file several petitions, each including such of said causes of action as might have been joined; and an action shall be docketed for each of the petitions, and the same shall be proceeded in without further service. [Civil Code, § 90, S. & C. 975.]

Defendant may demur to part and answer part.

SEC. 10. The defendant may demur to one or more of the several causes of action stated in the petition, and answer as to the residue. [Civil Code, § 91, S. & C. 975.]

Defendant may demur to the reply.

SEC. 11. The defendant may also demur to the reply, or to a separate traverse to, or avoidance of, a defense or counterclaim contained in the reply, on the ground that it is insufficient in law, upon its face.

The plaintiff may demur to answer generally.

SEC. 12. The plaintiff may demur to a counterclaim, or a defense consisting of new matter contained in the answer, on the ground that it is insufficient in law, on its face.

Causes of demurrer to answer demanding relief.

SEC. 13. The plaintiff may also demur to a counterclaim, upon which the defendant demands an affirmative judgment, when it appears on its face, either—

1. That the court has no jurisdiction of the subject thereof.

2. That the defendant has not legal capacity to recover upon the same.

3. That there is another action pending between the same parties, for the same cause.

4. That the counterclaim is not of the character specified in section sixteen of this chapter.

5. That the counterclaim does not state facts sufficient to entitle the defendant to the relief demanded.

SUBDIVISION IV. ANSWER AND CROSS-PETITION.

What the answer must contain.

SEC. 14. The answer shall contain—

1. A general or specific denial of each material allegation of the petition controverted by the defendant.

2. A statement of any new matter constituting a defense, counterclaim, or set-off, in ordinary and concise language. [Civil Code, § 92, S. & C. 975.]

SEC. 15. The defendant may set forth in his answer as many grounds of defense, counterclaim, and set-off as he may have, whether they be such as have been heretofore de-

nominated legal or equitable, or both; and he may claim therein relief touching the matters in question in the petition against the plaintiff, or against other defendants in the same action. Each must be separately stated and numbered, and they must refer in an intelligible manner to the causes of action which they are intended to answer. [Civil Code, §§ 84, 93, S. & C. 968, 978.]

May contain different defenses, counterclaims, and set-offs.

SEC. 16. The counterclaim, mentioned in the last section, must be one existing in favor of a defendant, and against a plaintiff, between whom a several judgment might be had in the action, and arising out of the contract or transaction set forth in the petition as the foundation of the plaintiff's claim, or connected with the subject of the action. [Civil Code, § 94, S. & C. 979.]

What is a counterclaim.

SEC. 17. If a defendant omit to set up a counterclaim or set-off, he cannot recover costs against the plaintiff in any subsequent action thereon; but this section shall not apply to causes of action which are stricken out of or withdrawn from the answer, as provided in sections eighteen and thirty-three of this chapter. [Civil Code, § 95, S. & C. 979.]

Costs not recoverable in subsequent suit on counterclaim or set-off.

SEC. 18. When it appears that a new party is necessary to a final decision upon the counterclaim, the court may either permit the new party to be made by a summons, to answer the counterclaim, or may direct the counterclaim to be stricken out of the answer, and made the subject of a separate action. [Civil Code, § 96, S. & C. 980.]

New party to be made if necessary.

SEC. 19. A set-off can only be pleaded in an action founded on contract, and must be a cause of action arising upon contract, or ascertained by the decision of a court. [Civil Code, § 97, S. & C. 980.]

What is a set-off, and when it can be pleaded.

SEC. 20. If a new party be necessary to a final decision upon the set-off, the court shall permit the new party to be made, if, owing to the insolvency or non-residence of the plaintiff, or other cause, the defendant will be in danger of losing his claim, unless permitted to use it as a set-off. [Civil Code, § 98, S. & C. 981.]

New party to be made if necessary to decision of set-off.

SEC. 21. When cross-demands have existed between persons, under such circumstances that if one had brought an action against the other a counterclaim or set-off could have been set up, neither can be deprived of the benefit thereof by assignment by the other, or by his death, but the two demands must be deemed compensated, so far as they equal each other. [Civil Code, § 99, S. & C. 981.]

When cross-demands are to be deemed compensated.

SEC. 22. The guardian of an infant, or person of unsound mind, or an attorney for a person in prison, shall deny in the answer all material allegations of the petition prejudicial to such defendant. [Civil Code, § 100, S. & C. 981.]

Answer of guardian and attorney; what to contain.

SUBDIVISION V. REPLY.

SEC. 23. Where the answer contains new matter, the plaintiff may reply to such new matter, denying generally or specifically each allegation controverted by him; and

Reply; when to be filed, and what to contain.

he may also allege, in ordinary and concise language, any new matter, not inconsistent with the petition, constituting an answer to such new matter in the answer. [Civil Code, § 101, S. & C. 981]

SUBDIVISION VI. GENERAL RULES.

Pleading to answer asking relief.

SEC. 24. When in an answer affirmative relief is demanded against a co-defendant, such co defendant may demur or answer thereto, as if it were a petition; and to such answer of the co-defendant a demurrer or reply may be filed, as in other cases.

What allegations are deemed to be true, and what denied.

SEC. 25. Every material allegation of the petition not controverted by the answer, and every material allegation of new matter in the answer not controverted by the reply, shall, for the purposes of the action, be taken as true; but the allegation of new matter in the reply shall be deemed controverted by the adverse party, as upon a direct denial or avoidance, as the case may require. Allegations of value, or of amount of damage, shall not be considered as true, by failure to controvert them. [Civil Code, § 127, S. & C. 987.]

What is a material allegation.

SEC. 26. A material allegation in a pleading is one essential to the claim or defense, which could not be stricken from the pleading without leaving it insufficient. [Civil Code, § 128, S & C. 987]

Presumptions of law, etc., need not be pleaded.

SEC. 27. Neither presumptions of law, nor matters of which judicial notice is taken, need be stated in the pleading. [Civil Code, § 129, S. & C. 987.]

Copies may be substituted for lost pleadings.

SEC. 28. If an original pleading be lost, or withheld by any person, the court may allow a copy thereof to be substituted. [Civil Code, § 130, S. & C. 987.]

When copies to be filed with pleading.

SEC. 29. If the action, counterclaim, or set off is founded on an account, or on a written instrument as evidence of indebtedness, a copy thereof must be attached to and filed with the pleading. If not so attached and filed, the reason for the omission must be stated in the pleading. [Civil Code, § 117, S. & C. 984.]

What is a sufficient pleading upon instrument for payment of money only.

SEC. 30. In an action, counterclaim, or set-off, founded upon an account, or instrument for the unconditional payment of money only, it shall be sufficient for a party to set forth a copy of the account or instrument, with all credits and the indorsements thereon, and to state that there is due to him, on such account or instrument, from the adverse party, a specified sum, which he claims, with interest. When others than the makers of a promissory note, or the acceptors of a bill of exchange, are parties, it shall be necessary to state the facts which fix their liability. [Civil Code, § 122, S. & C. 984.]

What matter may be stricken from a pleading.

SEC. 31. If redundant, irrelevant, or scurrilous matter be inserted in a pleading, it may be stricken out on the motion of the party prejudiced thereby; and obscene words may be stricken from a pleading on the motion of a party, or by the court of its own motion. [Civil Code, § 118, S. & C. 984.]

Allegations may be made definite by amendment.

SEC. 32. When the allegations of a pleading are so indefinite and uncertain that the precise nature of the charge or defense is not apparent, the court may require the pleading to be made definite and certain by amendment. [Civil Code, § 118, S. & C. 984.]

A counterclaim or set-off may be made the subject of a separate action.

SEC. 33. The court, at any time before the final submission of the cause, on motion of the defendant, may allow a counterclaim or set-off to be withdrawn, and the same may become the subject of another action. On motion of either party, to be made at the time such counterclaim or set-off is withdrawn, an action on the same shall be docketed and proceeded in without process; and the court shall direct the time and manner of pleading therein. If an action be not so docketed, suit may be brought as in other cases. [Civil Code, § 119, S. & C. 984.]

How a judgment to be pleaded and proved.

SEC. 34. In pleading a judgment, or other determination of a court, or officer of special jurisdiction, it shall be sufficient to state that such judgment or determination was duly given or made. If such allegation be controverted, the party pleading must establish, on the trial, the facts conferring jurisdiction. [Civil Code, § 120, S. & C. 984.]

How conditions precedent to be pleaded.

SEC. 35. In pleading the performance of conditions precedent in a contract, it shall be sufficient to state that the party duly performed all the conditions on his part; and if such allegation be controverted, the party pleading must establish, on the trial, the facts showing such performance. [Civil Code, § 121, S. & C. 984.]

Private statutes.

SEC. 36. In pleading a private statute, or a right derived therefrom, it shall be sufficient to refer to such statute by its title, and the day of its passage. [Civil Code, § 123, S. & C. 984.]

Libel and slander.

SEC. 37. In an action for a libel or slander, it shall be sufficient to state generally, that the defamatory matter was published or spoken of the plaintiff; and if the allegation be denied, the plaintiff must prove the facts, showing that the defamatory matter was published or spoken of him. And in such action it shall not be necessary to set out any obscene word, but it shall be sufficient to state its substance. [Civil Code, § 124, S. & C. 985.]

What defendant in such action may allege and prove.

SEC. 38. In the actions mentioned in the last section, the defendant may allege and prove the truth of the matter charged as defamatory; and in every case he may prove any mitigating circumstances to reduce the amount of damages. [Civil Code, § 125, S. & C. 985.]

How real property to be described.

SEC. 39. In an action for the recovery of real estate, the property shall be described with such certainty as will enable an officer holding an execution to identify it. [Civil Code, § 126, S. & C. 986.]

Pleadings to be liberally construed.

SEC. 40. The allegations of a pleading shall be liberally construed, with a view to substantial justice between the parties. [Civil Code, § 114, S. & C. 983.]

Rule-days for pleadings.

SEC. 41. The answer or demurrer by the defendant shall be filed on or before the third Saturday, and the reply or demurrer by the plaintiff on or before the fifth Saturday, after the return day of the summons, or service by publication; and the answer or demurrer of a defendant to a cross-petition shall be filed on or before the third Saturday, and the reply or demurrer thereto on or before the fifth Saturday, after the filing of the cross-petition. [Civil Code, § 103, S. & C. 982.]

Rule-day may be extended.

SEC. 42. The court, or a judge thereof in vacation, may, for good cause shown extend the time for filing any pleading, upon such terms as may be just. [Civil Code, § 104, S. & C. 982.]

Interrogatories may be annexed to a pleading.

SEC. 43. A party may annex to his pleading, other than a demurrer, interrogatories, pertinent to the issue made in the pleadings, which interrogatories, if not demurred to, shall be plainly and fully answered under oath, by the party to whom they are propounded, or if such party is a corporation, by the president, secretary, or other officer thereof, as the party propounding requires. [Civil Code, § 105, 70 v. 54.]

When interrogatories to be answered.

SEC. 44. When annexed to the petition, the interrogatories shall be answered within the time limited for answer to the petition; when annexed to the answer, they shall be answered within the time limited for a reply; when annexed to the reply, they shall be answered within the time allowed for an answer; but further time may be allowed in all cases by the court, or a judge thereof in vacation. [Civil Code, § 105, 70 v. 54.]

How answers to interrogatories enforced.

SEC. 45. Answers to interrogatories may be enforced by non-suit, judgment by default, or by attachment, as the justice of the case may require; and, on the trial, such answers, so far as they contain competent testimony on the issue or issues made, may be used by either party. [Civil Code, § 105, 70 v. 54.]

Pleadings to be subscribed and verified.

SEC. 46. Every pleading and motion must be subscribed by the party or his attorney, and every pleading of fact, except as provided in the next section, must be verified by the affidavit of the party, his agent or attorney. When a corporation is the party, the verification may be made by an officer thereof, its agent or attorney; and when the state, or any officer thereof in its behalf, is the party, the verification may be made by any person acquainted with the facts, the attorney prosecuting or defending the action, the prosecuting attorney, or attorney general. [Civil Code, §§ 105, 106, 70 v. 54, S. & C. 982.]

When verification not required.

SEC. 47. The verification mentioned in the last section shall not be required to the answer of a guardian defending for an infant or a person of unsound mind, or the attorney of a person imprisoned; nor in any case where the admission of the truth of a fact stated in the pleading might subject the party to a criminal or penal prosecution. [Civil Code, § 107, S. & C. 982.]

When one of several parties may verify.

SEC. 48. If several are united in interest, and plead together, the affidavit may be made by one of them. [Civil Code, § 108, S. & C. 982.]

What is a sufficient affidavit.

SEC. 49. The affidavit shall be sufficient if it is stated therein that the affiant believes the facts stated in the pleading to be true. [Civil Code, § 109, S. & C. 982.]

What is a sufficient verification by a non-resident.

SEC. 50. When the party pleading is a non-resident of the county in which the action is brought, or is absent from the county where the pleading is filed, an affidavit made before filing the pleading, and filed with it, stating the substance of the facts afterwards inserted in the pleading, shall be a sufficient verification. [Civil Code, § 110, S. & C. 982.]

Affidavit to be signed and certified.

SEC. 51. The affidavit verifying a pleading may be made before any person before whom a deposition might be taken, and must be signed by the party making the same; and the officer before whom the same was taken shall certify that it was sworn to before him, and signed in his presence. The certificate of the officer, signed officially by him, shall be evidence that the affidavit was duly made, that the name of the officer was written by himself, and that he was such officer. [Civil Code, § 111, S. & C. 983.]

To what the verification does not apply.

SEC. 52. The verification of the pleading does not apply to the amount claimed, except in actions founded on contract, express or implied, for the payment of money only. [Civil Code, § 112, S. & C. 983.]

When affidavit may be made by agent or attorney.

SEC. 53. The affidavit verifying a pleading can be made by the agent or attorney only—

1. When the facts are within the personal knowledge of the agent or attorney.

2. When the plaintiff is an infant, or of unsound mind, or imprisoned.

3. When the pleading to be verified is founded upon a written instrument for the payment of money, and such instrument is in the possession of the agent or attorney.

4. When the party is not a resident of, or is absent from, the county. [Civil Code, § 113, S. & C. 983.]

Pleading not an admission of fact in another proceeding.

SEC. 54. A pleading, verified as herein required, shall not be used against a party in any criminal prosecution, or action or proceedings for a penalty or forfeiture, as proof of a fact admitted or alleged in such pleading; and such verification shall not make other or greater proof necessary on the side of the adverse party. [Civil Code, § 106, S. & C. 982.]

SUBDIVISION VII. MISTAKES AND AMENDMENTS.

Plaintiff may amend petition without leave, before answer.

SEC. 55. The plaintiff may amend his petition without leave, at any time before the answer is filed, without prejudice to the proceeding; but notice of such amendment shall be served upon the defendant, or his attorney; and the defendant shall have the same time to answer or demur thereto as to the original petition. [Civil Code, § 134, S. & C. 989.]

SEC. 56. At any time within ten days after a demurrer is

When amendment may be made after demurrer filed.

filed, the adverse party may amend, without leave, on payment of costs since filing the defective pleading. Notice of filing an amended pleading shall be forthwith served upon the other party, who shall have the same time thereafter to answer, or reply thereto, as to an original pleading. [Civil Code, § 135, S. & C. 989.]

When a party may plead after demurrer.

SEC. 57. When a demurrer is overruled, the party who demurred may answer or reply, if the court is satisfied that he has a meritorious claim or defense, and did not demur for delay. [Civil Code, § 136, S. & C. 989.]

Certain amendments may be made at any time.

SEC. 58. The court may, before or after judgment, in furtherance of justice, and on such terms as may be proper, amend any pleading, process, or proceeding, by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect, or by inserting other allegations material to the case; or, when the amendment does not change substantially the claim or defense, by conforming the pleading or proceeding to the facts proved. And when an action or proceeding fails to conform to the provisions of this title, the court may permit the same to be made conformable thereto, by amendment. [Civil Code, § 137, S. & C. 989.]

What errors and defects are immaterial.

SEC. 59. The court, in every stage of an action, must disregard any error or defect in the pleadings or proceedings which does not affect the substantial rights of the adverse party; and no judgment shall be reversed, or affected, by reason of such error or defect. [Civil Code, § 138, S. & C. 990.]

Amendment after demurrer sustained.

SEC. 60. If the demurrer be sustained, the adverse party may amend, if the defect can be remedied by amendment, with or without costs, as the court in its discretion shall direct. [Civil Code, § 139, S. & C. 990.]

Further time for trial, after amendment.

SEC. 61. When either party amends a pleading or proceeding, and the court is satisfied by affidavit, or otherwise, that the adverse party could not be ready for trial in consequence of the amendment, a continuance may be granted to some day in term, or to another term of the court. [Civil Code, § 140, S. & C. 990.]

When a party may be sued by a fictitious name.

SEC. 62. When the plaintiff is ignorant of the name of a defendant, such defendant may be designated in any pleading or proceeding by any name and description, and when the true name is discovered, the pleading or proceeding may be amended accordingly. The plaintiff, in such case, must state, in the verification of his petition, that he could not discover the true name, and the summons must contain the words "real name unknown," and a copy thereof must be served personally upon the defendant. [Civil Code, § 141, S. & C. 990.]

Supplemental pleading—when to be filed.

SEC. 63. Either party may be allowed, on notice, and on such terms as to costs as the court, or a judge thereof, may prescribe, to file a supplemental petition, answer, or reply, alleging facts material to the case occurring subsequent to

the filing of the former petition, answer, or reply. [Civil Code, § 142, S & C. 990.]

When actions may be consolidated.

SEC. 64. When two or more actions are pending in the same court, the defendant may, on motion, and notice to the adverse party, require him to show cause why the same shall not be consolidated; and if it appear that, at the time the motion is made, the actions could be joined, and if the court, or a judge thereof, find that it ought to be done, the several actions shall be consolidated. [Civil Code, §§ 143, 144, S. & C. 990, 991.]

SUBDIVISION VIII. MOTIONS.

What is a motion.

SEC. 65. A motion is an application for an order, addressed to a court or judge, by a party to a suit or proceeding, or one interested therein. [Civil Code, § 503, S. & C. 1098.]

When several objects may be included therein.

SEC. 66. Several objects may be included in the same motion, if they all grow out of, or are connected with, the action or proceeding in which it is made. [Civil Code, § 504, S. & C. 1098.]

Notice of motion—what to contain.

SEC. 67. When notice of a motion is required, it must be in writing, and shall contain the names of the parties to the action or proceeding in which it is made, the name of the court or judge before whom it is to be made, the place where and the day on which it will be heard, the nature and terms of the order or orders to be applied for, and if affidavits are to be used on the hearing, that fact shall be stated; and the notice shall be served a reasonable time before the hearing. [Civil Code, § 505, S. & C. 1098.]

Who may serve notices.

SEC. 68. Notices of motions may be served by a sheriff, coroner, or constable, or by a disinterested person; and the return of an officer, or affidavit of such person, shall be proof of service. [Civil Code, § 506, S. & C. 1098.]

How, and upon whom, service to be made.

SEC. 69. The service of a notice shall be made as required for the service of a summons, and when served by an officer he shall be entitled to like fees. The service shall be on the party, or his attorney of record, if either is a resident of the county in which the motion is made; and if there is more than one party adverse to such motion, service shall be made upon each party, or his attorney. [Civil Code, §§ 506–7, S. & C. 1098.]

When notice not required.

SEC. 70. Motions to strike pleadings and papers from the files may be made with or without notice, as the court or judge shall direct. [Civil Code, § 508, S. & C. 1099.]

DIVISION III. TRIAL.

CHAPTER 1. PROVISIONS PRELIMINARY.
CHAPTER 2. CONDUCT OF TRIAL.
CHAPTER 3. EVIDENCE.
CHAPTER 4. EXCEPTIONS.
CHAPTER 5. NEW TRIAL.

CHAPTER 1.

PROVISIONS PRELIMINARY.

SUBDIVISION I. *The issue—how tried.*
SUBDIVISION II. *Time of trial.*
SUBDIVISION III. *Tender, and offer to confess judgment.*
SUBDIVISION IV. *Revivor of actions.*

SUBDIVISION I.

SECTION
1. What a trial is.
2. What is an issue.
3. How an issue of fact is raised.
4. How issues are to be tried.
5. What issues to be tried by the court.

SUBDIVISION II.

6. The trial docket.
7. When judgment on default may be entered
8. The order in which cases are to be heard.
9. At what term actions are triable.
10. Clerk to make out bar-docket.

SUBDIVISION III.

11. Plea of tender of money before suit.
12. Plea of tender of article or labor before suit.
13. Offer to confess judgment before action brought.
14. Offer to confess out of court.
15. Offer to confess in open court.
16. Such offers not to affect the trial.
17. Further application of preceding sections.

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18. What actions abate by death of a party.
19. Action for dower does not abate.
20. When the action may proceed without revivor.
21. Abatement as to some defendants; when action may proceed as to others.
22. When and against whom action revived.
23. Revivor by appearance or supplemental pleading.
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26. How served.
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28. In whose name revived when plaintiff dies.
29. In whose name when defendant dies.
30. When defendant in real action dies.
31. Limitation when defendant dies.

SECTION
32. Limitation when plaintiff dies.
33. Action to be dismissed when it can not be revived.
34. Defendant may have action dismissed for want of revivor.
35. Trial to be postponed because of revivor.

SUBDIVISION I. THE ISSUE—HOW TRIED.

What a trial is

SECTION 1. A trial is a judicial examination of the issues, whether of law or of fact, in an action or proceeding. [Civil Code, § 262, S. & C. 1020.]

What is an issue.

SEC. 2. Issues arise on the pleadings where a fact, or conclusion of law, is maintained by one party and controverted by the other. They are of two kinds—

1. Of law.
2. Of fact. [Civil Code, § 260, S. & C. 1020.]

How an issue of fact is raised.

SEC. 3. An issue of fact arises—

1. Upon a material allegation in the petition denied by the answer.
2. Upon a set off, counterclaim, or new matter presented in the answer and denied by the reply.
3. Upon material new matter in the reply, which shall be considered as controverted by the opposite party without further pleading. [Civil Code, § 261, S. & C. 1020.]

How issues are to be tried.

SEC. 4. Issues of law must be tried by the court, unless referred as hereinafter provided. Issues of fact arising in actions for the recovery of money only, or specific real or personal property, shall be tried by a jury, unless a jury trial be waived, or a reference be ordered as hereinafter provided. [Civil Code, § 263, S. & C. 1020.]

What issues to be tried by the court.

SEC. 5. All other issues of fact shall be tried by the court, subject to its power to order any issue to be tried by a jury, or referred. [Civil Code, § 264, S. & C. 1021.]

SUBDIVISION II. TIME OF TRIAL.

The trial docket.

SEC. 6. The clerk shall make a trial docket at least twelve days before the first day of each term, and the cases shall be set for particular days, in the order in which they stand on the appearance docket; and a case in all its stages in the same court, and upon every docket or book, and all papers filed or issued therein, shall bear the appearance docket number. But the clerk shall not place upon the trial docket any case in which nothing remains to be done except to execute an order for the sale of real or personal property, and to distribute the proceeds as directed by the order; and if it become necessary, the case may be redocketed, on the application of either party, whereupon it shall stand in all respects as if it had remained on the docket. [Civil Code, § 306, S. & C. 1034.]

When judgment on default may be entered.

SEC. 7. In an action upon an account, or written instrument for the payment of money only, or in foreclosure, judgment may be entered, at any time during the term, after the

defendant is in default for an answer; but the court may, for good cause shown, give further time for answer. [Civil Code, § 307, 66 v. 42.]

The order in which cases are to be heard.

SEC. 8. Cases in which there is an issue of fact, or damages are to be assessed, shall be tried in the order in which they stand on the trial docket, unless, by the consent of the parties, or by the order of the court, they are continued, or placed at the heel of the docket. All other cases shall be heard in the order in which they stand on the trial docket, unless the court otherwise direct. The court may, at any time, hear a demurrer or a motion, and may, by rule, prescribe the time of hearing demurrers and motions. [Civil Code, § 307, 66 v. 42.]

At what term actions are triable.

SEC. 9. Actions are triable at the first term of the court after the issues therein, by the times fixed for pleading, are or should have been made up; and when the issues are or should have been made up during a term, such actions shall be triable at that term. When the issues are or should have been made up either before or during a term of court, but after the period for the preparation of the trial docket of the term, the clerk, if required by the court, shall place such actions on the trial docket of that term. [Civil Code, § 308, S. & C. 1035.]

Clerk to make out bar-docket.

SEC. 10. The clerk shall make a copy of the trial docket for the use of the bar, before the first day of the term. [Civil Code, § 309, S. & C. 1035.]

SUBDIVISION III. TENDER, AND OFFER TO CONFESS JUDGMENT.

Plea of tender of money before suit.

SEC. 11. If, in an action on a contract for the payment of money, the defendant answer and prove that he did tender payment of the money due on the contract, at any time before the commencement of the action thereon, and pay to the clerk, at any time before trial, the money so tendered, the plaintiff shall not have judgment for more than the money so due and tendered, without costs, and shall pay the defendant his costs. [51 v. 397, § 1, S. & C. 1140.]

Plea of tender of article or labor before suit.

SEC. 12. If, in an action on a contract for the payment of any article or thing other than money, or for the performance of any work or labor, the defendant answer that he did tender payment or performance of such contract, at such time and place, and in such articles, work, or labor, as by such contract he was bound to pay or perform, and the court or jury find that he did tender, as alleged in his pleading, they shall, at the same time, assess the value of the property or labor so tendered, and thereupon judgment shall be rendered in favor of the plaintiff for the sum so found, without interest or costs; but if the defendant forthwith perform his contract, or give to the plaintiff such assurance as the court may approve that he will perform the same within such time as the court may direct, judgment shall be rendered for the defendant; and in case any article so tendered be of

a perishable nature, it shall, from the time of such tender, be kept at the risk and expense of the plaintiff, provided the defendant take reasonable care of the same. [51 v. 397, § 1, S. & C. 1140.]

Offer to confess judgment before action brought.

SEC. 13. Before an action for the recovery of money is brought against any person, he may go into the court of the county of his residence, or of that in which the person having the cause of action resides, which would have jurisdiction of the action, and offer to confess judgment in favor of such person for a specified sum, on such cause of action; whereupon, if such person, having had such notice that the offer would be made, of its amount, and of the time and place of making it, as the court deems reasonable, fail to attend to accept the confession, or if he attend, and refuse to accept it, and afterwards commence an action upon such cause, and fail to recover more than the amount so offered to be confessed, and the interest thereon from the date of the offer, he shall pay all the costs of the action. [Civil Code, § 499 S. & C. 1095.]

Offer to confess out of court.

SEC. 14. The defendant in an action for the recovery of money only may, at any time before the trial, serve upon the plaintiff, or his attorney, an offer in writing to allow judgment to be taken against him, for the sum specified therein. If the plaintiff accept the offer, and give notice thereof to the defendant, or his attorney, within five days after service of it, the offer, and an affidavit that the notice of acceptance was delivered in the time limited, may be filed by the plaintiff, or the defendant may file the acceptance, with a copy of the offer, verified by affidavit; and in either case, the offer and acceptance shall be noted in the journal, and judgment rendered accordingly. If the notice of acceptance be not given in the period limited, the offer shall be deemed withdrawn. If the plaintiff fail to obtain judgment for more than was offered by the defendant, he shall pay the defendant's costs from the time of the offer. [Civil Code, § 493, S. & C. 1094.]

Offer to confess in open court.

SEC. 15. The defendant in an action for the recovery of money may offer in court to confess judgment for part of the amount claimed, or part of the causes involved in the action; whereupon, if the plaintiff, being present, refuse to accept such confession of judgment, in full of his demands against the defendant in the action, or having had such notice that the offer would be made, of its amount, and of the time of making it, as the court deems reasonable, fail to attend, and, on the trial, do not recover more than was so offered to be confessed, and the interest thereon from the date of the offer, such plaintiff shall pay all the costs of the defendant incurred after the offer. [Civil Code, § 498, S. & C. 1095.]

Such offers not to affect the trial.

SEC. 16. An offer made as provided in the three preceding sections shall not be deemed an admission of the cause of action, or amount to which the plaintiff is entitled; nor shall it be a cause of continuance of the action, or a post-

ponement of the trial, or given in evidence or mentioned on the trial. [Civil Code, §§ 493, 494, 498, 499, S. & C. 1094-5.]

Further application of preceding sections.

SEC. 17. The provisions of this subdivision shall be applied, so far as they may fairly be made applicable, to a tender or offer made by the plaintiff; and to the same extent, the same provisions may, in the discretion of the court, be applied to one or more of several causes of action, counterclaim, or set-off, in which case the court shall make such order as to costs as it deems proper.

SUBDIVISION IV. REVIVOR OF ACTIONS.

What actions abate by death of a party.

SEC. 18. Except as otherwise provided, no action or proceeding pending in any court shall abate by the death of either or both of the parties thereto, except an action for libel, slander, malicious prosecution, assault, or assault and battery, for a nuisance, or against a justice of the peace for misconduct in office, which shall abate by the death of either party. [Civil Code, § 399, S. & C. 1058.]

Action for dower does not abate.

SEC. 19. If the plaintiff in an action for dower die before final judgment therein, the action may be revived in the name of her personal representative, for the purpose mentioned in section nine of the chapter in this title relating to dower. [60 v. 10, S. & S. 311.]

When the action may proceed without revivor.

SEC. 20. When there are several plaintiffs or defendants, and one of them dies, or his powers as a personal representative cease, if the right of action survive to or against the remaining parties, the action may proceed; but the death of the party, or the cessation of his powers shall be first stated on the record. [Civil Code, § 400, S. & C. 1058.]

Abatement as to some of the defendants; when action may proceed as to others.

SEC. 21. When one of several plaintiffs or defendants dies, or his powers as a personal representative cease, if the cause of action do not survive, the court, if of opinion that the merits of the controversy can be properly determined, and the principles applicable to the case fully settled, may proceed to try the same as between the remaining parties; but the judgment shall not prejudice any who were not parties at the time of the trial. [Civil Code, § 401, S. & C. 1058.]

When and against whom action revived.

SEC. 22. When one of the parties to an action dies, or his powers as a personal representative cease before judgment, if the right of action survive in favor of or against his representatives or successor, the action may be revived, and proceed in the name of such representatives or successor. [Civil Code, § 402, S. & C. 1058; 38 v. 146, §§ 240, 241, S. & C. 611, 612.]

Revivor by appearance or supplemental pleading.

SEC. 23. A revivor may be effected by the allowance by the court, or a judge thereof in vacation, of a motion of the representative or successor in interest to become a party to the action, or by supplemental pleading, alleging the death of the party, and naming his representative or successor in interest, upon whom service may be made as in the commencement of an action. The limitations contained in sub-

sequent sections of this chapter do not apply to this section. [Civil Code, § 39, S. & C. 958; 24 O. S. 182. 29 O. S. 87.]

Revivor by conditional order.

SEC. 24. A revivor may also be effected by a conditional order of the court, if made in term, or by a judge thereof, if in vacation, that the action be revived in the name of the representative or successor of the party who died, or whose powers ceased, and proceed in favor of or against him. [Civil Code, § 403, S. & C. 1058.]

The conditional order—what to contain.

SEC. 25. The order may be made on the motion of the adverse party, or of the representative or successor of the party who died, or whose powers ceased, suggesting his death, or the cessation of his powers, which, with the name and capacities of his representative or successor, shall be stated in the order. [Civil Code, § 404, S. & C. 1059.]

How served.

SEC. 26. If the order is made by consent of the parties, the action shall forthwith stand revived; and if not made by consent, the order shall be served upon the party adverse to the one making the motion, in the same manner, and returned within the same time, as a summons; and if sufficient cause be not shown against the revivor, the action shall stand revived. [Civil Code, § 405, S. & C. 1059.]

When service may be made by publication.

SEC. 27. When the plaintiff makes an affidavit that the representatives of the defendant, or any of them in whose name the action is ordered to be revived, are non-residents of the state, or have left the same to avoid the service of the order, or so conceal themselves that the order can not be served upon them, or that the names and residence of the heirs or devisees of the person against whom the action is ordered to be revived, or some of them, are unknown to the affiant, a notice may be published for six consecutive weeks, as provided by section fourteen, chapter six, division two, notifying them to appear on a day therein named, not less than ten days after the publication is complete, and show cause why the action should not be revived against them; and if sufficient cause be not shown to the contrary, the action shall stand revived. [Civil Code, § 406, S & C. 1059.]

In whose name revived when plaintiff dies.

SEC. 28. Upon the death of the plaintiff, the action may be revived in the names of his representatives to whom his right has passed. Where his right has passed to his personal representative, the revivor shall be in his name; where it has passed to his heirs or devisees who could support the action if brought anew, the revivor may be in their names. [Civil Code, § 407, S. & C. 1059.]

In whose name when defendant dies.

SEC. 29. Upon the death of a defendant in an action wherein the right, or any part thereof, survives against his personal representative, the revivor shall be against him; and it may also be against the heirs or devisees of the defendant, or both, when the right of action, or any part thereof, survives against them. [Civil Code, § 408, S. & C. 1059.]

When defendant in real action dies.

SEC. 30. Upon the death of a defendant in an action for the recovery of real property only, or which concerns only his rights or claims to such property, the action may be re-

vived against his heirs or devisees, or both, and an order therefor may be forthwith made, in the manner directed in the preceding sections of this subdivision. [Civil Code, § 409, S. & C. 1059.]

Limitation, when defendant dies.

SEC. 31. An order to revive an action against the representative or successor of a defendant shall not be made without the consent of such representative or successor, unless in one year from the time it could have been first made. [Civil Code, § 410, S. & C. 1059.]

Limitation, when plaintiff dies.

SEC. 32. An order to revive an action in the name of the representative or successor of a plaintiff may be made forthwith, but shall not be made, of right, without the consent of the defendant, after the expiration of one year from the time the order might have been first made; but where the defendant is dead, or his powers have ceased, the order of revivor on both sides may be made in the period limited in the last section. [Civil Code, § 411, S. & C. 1059.]

Action to be dismissed when it can not be revived.

SEC. 33. When it appears by affidavit that the powers of a party who sues or is sued as a personal representative have ceased, or that either party to an action has been dead, for a period so long that the action can not be revived in the names of his representatives or successor without the consent of both parties, the court shall order the action to be stricken from the docket. [Civil Code, § 412, S. & C. 1060.]

Defendant may have action dismissed for want of revivor.

SEC. 34. At any term succeeding the death of the plaintiff, while the action remains on the docket, the defendant, having given to the plaintiff's representatives in whose names the action might be revived ten days' notice of the application, may have an order to strike the action from the docket, and for costs against the estate of the plaintiff, unless the action be forthwith revived. [Civil Code, § 413, S. & C. 1060.]

Trial not to be postponed because of revivor.

SEC. 35. When an action stands revived, the trial thereof shall not be postponed by reason of the revivor. [Civil Code, § 414, S. & C. 1060.]

CHAPTER 2.

CONDUCT OF THE TRIAL.

SUBDIVISION I. *Summoning and impaneling the jury.*
SUBDIVISION II. *Trial by jury, and verdict.*
SUBDIVISION III. *Trial by the court.*
SUBDIVISION IV. *Trial by referees.*
SUBDIVISION V. *Trial by master commissioners.*
SUBDIVISION VI. *Trial on appeal.*

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1. Court of common pleas to determine number of jurors to be selected.
2. How to be apportioned throughout the county.
3. Portion for each township and ward to be selected, and list returned.
4. Clerk to give notice when lists are not returned.
5. When and how additional apportionment to be made.
6. The drawing of grand and petit jurors.
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8. Service and return of venire.
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10. When talesmen to be summoned.
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59. Appointment of master commissioners.
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65. How trials on appeal conducted.
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SUBDIVISION I. SUMMONING AND IMPANELING THE JURY.

Court of common pleas to determine number of jurors to be selected.

SECTION 1. The court of common pleas of each county shall, at the first term thereof in each year, determine the number of persons necessary to be selected in each county, annually, to serve as grand and petit jurors in the district court, superior court, and court of common pleas, and in counties in which the probate court has criminal jurisdiction, for such probate court required in such jurisdiction, and cause a memorandum thereof to be entered on the journal; such order, if not made at that term, may be made at any other time, and amended from time to time at the discretion of the court. Until such order is made, the number of persons to be selected for jurors in each county shall be as theretofore determined; but if there has been no such determination, the number shall be one hundred and thirty, until otherwise ordered. [70 v. 167, § 1.]

How to be apportioned throughout the county.

SEC. 2. The clerk of the court of common pleas of each county shall, on the first Monday of September, annually, apportion the number of jurors determined as aforesaid among the several townships, and the wards of municipal corporations, in his county, according to the number of male inhabitants therein of twenty-one years of age, and shall make, in writing, a statement of the number of jurors so apportioned to each township and ward, and forthwith deliver the same to the sheriff, who, at the time of giving public notice of the general fall election, shall insert a clause in his notification giving the trustees of the several townships, and the councilmen of the several wards, notice of the number of persons to be returned for jurors therefrom, respectively. [70 v. 167, § 2.]

Portion for each township or ward to be selected, and list returned.

SEC. 3. The trustees of each township, and the councilmen of each ward, shall, on the day of such general election, annually, select, of good, judicious persons, having the qualifications of an elector, and not exempt by law from serving as jurors, the number of persons designated in the notice to be returned for jurors therefrom, and shall make a list thereof, and deliver the same to the judge of election who returns to the clerk of the court the poll-book of the election; and such judge of election shall deliver the list to the clerk at the time he returns the poll-book. [70 v. 167, § 3.]

Clerk to give notice when lists are not returned.

SEC. 4. If the trustees of any township, or the councilmen of any ward, fail to return the names of jurors as herein required, to the clerk of the court, the clerk shall, on ascertaining the fact, immediately notify the trustees or councilmen of the failure, and they shall thereupon meet, and select and return to the clerk without delay the requisite number of names as aforesaid; and the names so returned shall be placed in the box as if returned with the poll-books. [70 v. 167, § 19.]

When and how additional apportionment to be made.

SEC. 5. Whenever in any county all of the names of jurors have been drawn from the box, or the names of a sufficient number of jurors for the transaction of the business of the court for the unexpired portion of the year are not left in the box, the judge of the court of common pleas of the county may, during term time, or in vacation, order such number of jurors as he may consider necessary to be apportioned among the several townships and wards in the county, as provided by section two of this chapter; and the clerk, after making such apportionment, shall cause a statement in writing of the number of jurors required of each township and ward to be forthwith delivered to the sheriff of the county, who shall forthwith serve the same upon the trustees and councilmen, and return it, as a summons is served and returned. The trustees of the several townships, and the councilmen of the several wards, shall, immediately on the receipt of the statement, proceed to select good, judicious persons, having the qualifications of an elector, who were not selected at the previous fall election, to the number required of their respective townships and wards, and transmit a list of the names of persons so selected to the clerk of the court. [70 v. 167, § 4.]

The drawing of grand and petit jurors.

SEC. 6. The clerk of the court shall, within five days from the receipt of the lists, write the names of the persons so selected upon separate pieces of paper, and put them into a box, to be provided by him at the expense of the county, and securely kept for the purpose, and shall, at the clerk's office, between the hours of ten o'clock forenoon, and twelve o'clock noon, on the fourth Monday previous to the sitting of the court of common pleas, in the presence of the sheriff (the sheriff having first shaken the box, so as to mix the ballots on which the names are written), and in presence of

any other citizens who may choose to attend, proceed to draw twenty-seven ballots. the persons named on the first fifteen of which shall be summoned as grand jurors, and those named on the remainder shall be summoned as petit jurors. And the clerk shall forthwith issue a venire to the sheriff, commanding him to summon the persons whose names were so drawn, to attend as jurors at the seat of justice of the county on the first day of the next term of the court of common pleas holden therein, at ten o'clock A.M., unless the judge of the court of common pleas, by order made in vacation or term time, direct on what day of the term the petit jurors shall appear, whereupon the clerk shall issue a venire accordingly. [70 v. 167, § 5.]

Juries for district court, and special terms of common pleas.

SEC. 7. Unless the clerk is satisfied that a jury will not be required, he shall, between the same hours, at the same place, and in the same presence, on the fourth Monday before the sitting of the district court in his county, in like manner draw the names of twelve persons to serve as jurors at that term; and upon the receipt of an order of the judge of the court of common pleas, he shall forthwith, in like manner, at the same place, and in the same presence, draw the names of twelve persons to serve as petit jurors, or twenty-seven persons to serve as grand or petit jurors, for a special term of said court; and upon the order of the district court, or court of common pleas, at any special term, he shall forthwith, in like manner, draw the names of the number of persons named in the order, to serve as jurors at such term; and in every such case he shall issue his venire for the appearance of the jurors at the proper time and place. [70 v. 167, § 6; 50 v. 96, §§ 3–4, S. & C. 1136.]

Service and return of venire.

SEC. 8. If the venire be issued in vacation, the sheriff shall summon the persons named therein at least ten days before the sitting of court, or, if it be issued in term, he shall summon them forthwith; and he shall indorse on the venire the names of the jurors, and the time and manner of service, and return the same to the clerk forthwith, if issued in term, or on the first day of the term, if issued in vacation. Service may be made by reading the venire to the persons named therein, or by leaving at their usual places of abode a note or memorandum substantially as follows, to wit: I am commanded to summon you, —— ———, to appear before the ——— [*insert the name of the court*], to be holden in ———, on the —— day of ———, A.D. ——, at ten o'clock A.M., to serve as a grand or petit juror, as the case may be. [70 v. 167, § 7.]

Names of jurors not serving to be returned to the box.

SEC. 9. If any person selected as a grand or petit juror as aforesaid be not summoned, or, if summoned, be excused from serving at the term to which he is summoned, his name, unless he is exempt from serving as a juror by law, shall be returned to the box, and shall remain there until drawn out at some subsequent drawing; and whenever his

name is again drawn he shall serve, unless disabled or excused. [70 v. 167, § 8.]

When talesmen to be summoned.

SEC. 10. If, by reason of challenge, or for other cause, there be not present a sufficient number of jurors, summoned as aforesaid, to make up the panel, whether of the grand or petit jury, or the array be challenged and set aside, the sheriff shall summon a sufficient number of talesmen to make up the deficiency; or, if the deficiency is in the grand jury, the court may issue a special venire to the sheriff, commanding him to summon the persons therein named to attend forthwith as grand jurors; and at the close of every term of the court, all persons who have served on either jury for such term, together with those who are found permanently disabled, disqualified, or not liable to serve, shall be discharged. [70 v. 167, § 8.]

When a special venire may issue.

SEC. 11. When the court, or a judge thereof, deems it necessary to have two petit juries, or when, by reason of sickness, the setting aside of an array, absence, or otherwise, it becomes necessary to have a new petit jury, or a member to fill up the regular panel thereof for the term, the court, or a judge thereof, may order the names of the number of jurors required to be drawn from the box by the clerk, as in other cases, and a venire issued to summon them to appear as may be directed by the court, or a judge thereof. [70 v. 167, § 9; 57 v. 52, § 1, S. & C. 761.]

When venire for talesmen to issue.

SEC. 12. When it is necessary to summon talesmen, the court, on motion of either party, shall select them, and cause to be issued immediately a venire for as many persons having the qualifications of jurors as, in the opinion of the court, may be necessary, which jurors shall be required to appear forthwith, or at such time as may be fixed by the court; but no person known to be in or about the court-house shall be selected, without the consent of both parties. [70 v. 170, § 10.]

Special venire when sheriff is a party.

SEC. 13. When the sheriff is interested in a cause in any court of record, the party in interest opposed to that of the sheriff may apply to the court for a special venire, which, upon such application, the court shall direct to be issued to the coroner of the county, commanding him to summon a jury, having the qualifications hereinbefore prescribed, to try such cause; and where both the sheriff and coroner are so interested, or in case of the death, resignation, or absence from the county, of both the sheriff and coroner, then, and in either of such cases, the process may be directed to such discreet, disinterested person as the court may name, and the service and return of such person shall be valid to all intents and purposes. [70 v. 171, § 13.]

When challenge to the array may be made.

SEC. 14. A challenge to the array may be made, and the whole array set aside by the court, when the jury, grand or petit, was not selected, drawn, or summoned, or when the officer who executed the venire did not proceed, as prescribed by law, or for the misnomer of a juror or jurors; but such

fied to try the cause; the auditor shall make and preserve in his office a list of the names of the persons so selected; and the clerk shall, without delay, give four days' notice to both parties, or their attorneys of record, of the time of striking the jury, and furnish to each at the same time a true copy of such list. [70 v. 171, § 15.]

Striking the jury.

SEC. 25. At the time designated, the clerk shall attend at his office for the purpose of striking the jury, when the party demanding the jury, or his agent or attorney, shall strike off one name from the list, and the opposite party, his agent or attorney, another, and so on alternately until each shall have struck off twelve; and if either party fail or refuse to attend or strike, in person or otherwise, the clerk shall strike for him. When twenty-four names have been stricken off, the clerk shall make a fair copy of the remaining sixteen names, certify them to be the list of the jurors struck for the trial of the cause, and deliver the same to the sheriff, or other proper officer, together with the venire; and such officer shall annex the names therein contained to the venire, and summon the persons named as commanded. [70 v. 171, § 15.]

How jury made up on the trial.

SEC. 26. Upon the trial of the cause, the names of the jurors shall be called as they stand upon the panel, which order must be the same as that of the list at the time of striking the jury, and the first twelve of those who appear, and are not challenged for cause, or set aside by the court, shall be the jury, and shall be sworn as such; but if a jury be not made from said sixteen jurors, the sheriff shall, under the direction of the court, fill up the panel from the bystanders, or, on motion of either party, the court shall select the persons to fill the panel, and issue a special venire therefor, returnable forthwith. [70 v. 171, § 15.]

When court may appoint person to act in place of officer.

SEC. 27. If the clerk, auditor, or recorder, is interested in the cause, sick, absent from the county, related to either of the parties, or does not stand indifferent between them, a judge entitled to hold such court may, in term time or vacation, appoint some judicious, disinterested person to take the place of the officer so disqualified, in selecting and striking the jury, and to do and perform all things required to be done by such officer when acting in that behalf; but in no case shall it be necessary to strike such jury more than six days previous to the sitting of the court at which the cause is to be tried; and three days' service of the venire shall be sufficient. [70 v. 171, § 16.]

Cost of struck jury, and continuance.

SEC. 28. The party requiring a struck jury shall pay the fees for striking, summoning, impaneling, and qualifying the same, and one-half of all the fees of such jury. And a jury struck as aforesaid may be continued with the continuance of the cause, and be required to appear as jurors for the trial thereof at a subsequent term, unless the court otherwise order, upon good cause shown. [70 v. 172, § 17.]

SUBDIVISION II. TRIAL BY JURY, AND VERDICT.

Mode of conducting the trial.

SEC. 29. When the jury is sworn, the trial shall proceed, except as provided in the next section, in the following order, unless the court for special reasons otherwise direct:

1. The plaintiff must briefly state his claim, and may briefly state the evidence by which he expects to sustain it.

2. The defendant must then briefly state his defense, and may briefly state the evidence he expects to offer in support of it.

3. The party who would be defeated if no evidence were offered on either side, must first produce his evidence; the adverse party will then produce his evidence.

4. The parties shall then be confined to rebutting evidence, unless the court, for good reasons, in the furtherance of justice, permit them to offer evidence in their original case.

5. When the evidence is concluded, either party may request instruction to the jury on matters of law, which shall be given or refused by the court.

6. The parties may then submit or argue the case to the jury. The party required first to produce his evidence shall have the opening and closing argument. If several defendants, having separate defenses, appear by different counsel, the court shall arrange their relative order.

7. The court, after the argument is concluded, shall, before proceeding with other business, charge the jury; any charge shall be reduced to writing by the court, if either party, before the argument to the jury is commenced, request it; a charge or instruction, when so written and given, shall in no case be orally qualified, modified, or in any manner explained to the jury by the court; and all written charges and instructions shall be taken by the jurors in their retirement, and returned with their verdict into court, and shall remain on file with the papers of the case. [Civil Code, § 266, S. & S. 552.]

In actions to contest wills.

SEC. 30. In an action to contest the validity of a will, the party sustaining the will must introduce his testimony first, and offer the will and probate, and shall be entitled to open and close the argument; and rebutting testimony may be offered as in other cases. [72 v. 167, § 1.]

View of the property or place by jury.

SEC. 31. The court, when of opinion it is proper for the jurors to have a view of the property which is the subject of litigation, or of the place in which any material fact occurred, may order them to be conducted in a body, under the charge of an officer, to the place, which shall be shown to them by a person appointed by the court for that purpose. While the jurors are thus absent, no person, other than the person so appointed, shall speak to them on any subject connected with the trial. [Civil Code, § 267, S. & C. 1023.]

SEC. 32. When the case is submitted, the jury may decide in court, or retire for deliberation. If the jurors

Jury—where it shall deliberate.

retire, they must be kept together in some convenient place, under the charge of an officer, until they agree upon a verdict, or are discharged by the court, subject to the discretion of the court to permit them to separate temporarily at night, and at their meals. The officer having them under his charge shall not suffer any commuication to be made to them, nor make any himself, except to ask them if they have agreed upon their verdict, unless by order of the court; and he shall not, before their verdict is rendered, communicate to any person the state of their deliberations, or the verdict agreed upon. [Civil Code, § 268, S. & C. 1023.]

To be in charge of officer.

Admonition, if jurors are permitted to separate.

SEC. 33. If the jurors be permitted to separate, either during the trial, or after the case is submitted to them, they shall be admonished by the court that it is their duty not to converse with, nor suffer themselves to be addressed by, any other person, on any subject of the trial, and that it is their duty not to form or express an opinion thereon, until the cause is finally submitted to them. [Civil Code, § 269, S. & C. 1023.]

Further instruction, if jurors disagree as to law or fact.

SEC. 34. After the jurors have retired for deliberation, if there be a disagreement between them as to any part of the testimony, or if they desire to be informed as to any part of the law arising in the case, they may request the officer to conduct them to the court, where the information upon the matter of law shall be given; and the court may give its recollection as to the testimony on the point in dispute, in the presence [of,] or after notice to, the parties or their counsel. [Civil Code, § 270, S. & C. 1024.]

Discharge of jury before verdict.

SEC. 35. The jury may be discharged by the court on account of the sickness of a juror, or any accident or calamity requiring its discharge, or by consent of both parties, or after the jurors have been kept together until it satisfactorily appears that there is no probability of their agreeing. [Civil Code, § 271, S. & C. 1024.]

When cause to be retried.

SEC. 36. When the jury is discharged after the cause is submitted, or during the trial, the cause may be tried again immediately, or at a future time, as the court may direct. [Civil Code, § 272, S. & C. 1024.]

The return of the verdict.

SEC. 37. When the jurors have agreed upon their verdict, it must be reduced to writing, and signed by the foreman; and they must then be conducted into court, their names called by the clerk, and the verdict rendered by the foreman. The clerk must read the verdict to the jury, and make inquiry whether it is their verdict. [Civil Code, §§ 273, 274, S. & C. 1024.]

When further to deliberate.

SEC. 38. If a juror disagree, or if, when the jury is polled, a juror answer in the negative, or if the verdict be defective in matter of substance, the jury must be sent out again, for further deliberation. Either party may require the jury to be polled, which shall be done by the clerk or court asking each juror if it is his verdict. [Civil Code, §§ 273, 274, S. & C. 1024.]

When verdict reformed and jury discharged.

SEC. 39. If no disagreement be expressed, and neither party require the jury to be polled, or, on the polling, each juror answer in the affirmative, the verdict is complete, and the jury shall be discharged from the case. If the verdict be defective in form only, it may, with the assent of the jurors, before they are discharged, be corrected by the court. [Civil Code, §§ 273, 274, S. & C. 1024.]

What is a special, and what a general verdict.

SEC. 40. The verdict of a jury must be either general or special. A general verdict is that by which the jury finds, generally, upon all or any of the issues, in favor of either the plaintiff or defendant. A special verdict is that by which the jury finds the facts only. It must present the the facts as established by the evidence, and not the evidence to prove the facts; and the facts must be so presented that nothing shall remain to the court but to draw from them conclusions of law. [Civil Code, § 275, S. & C. 1024.]

When jury may render general or special verdict.

SEC. 41. In actions for the recovery of money only, or specific real property, the jury may render either a general or a special verdict. In all other cases, the court may direct the jury to find a special verdict, in writing, upon all or any of the issues; and in all cases the court may instruct the jurors, if they render a general verdict, to find upon particular questions of fact, to be stated in writing, and may direct a written finding thereon. The verdict or finding must be filed with the clerk, and entered on the journal. [Civil Code, § 276, S. & C. 1025.]

Special findings control general verdict.

SEC. 42. When the special finding of facts is inconsistent with the general verdict, the former shall control the latter, and the court may give judgment accordingly. [Civil Code, § 277, S. & C. 1026.]

Jury must assess the amount of recovery.

SEC. 43. When, by the verdict, either party is entitled to recover money of the adverse party, the jury, in its verdict, must assess the amount of recovery. [Civil Code, § 278, S. & C. 1026.]

SUBDIVISION III. TRIAL BY THE COURT.

When and how trial by jury may be waived.

SEC. 44. The trial by jury may be waived by the parties, in actions arising on contract, and in other actions with the assent of the court, in the following manner:

1. By the consent of the party appearing, when the other party fails to appear at the trial, by himself or attorney.

2. By written consent in person, or by attorney, filed with the clerk.

3 By oral consent in open court, entered on the journal. [Civil Code, § 279, S. & C 1026.]

What the court must state in its findings.

SEC. 45. Upon the trial of questions of fact by the court, it shall not be necessary for the court to state its finding, except, generally, for the plaintiff or defendant, unless one of the parties request it, with the view of excepting to the decision of the court upon the questions of law involved in the trial; in which case the court shall state in writing the

conclusions of fact found, separately from the conclusions of law. [Civil Code, § 280, S. & C 1026.]

Other provisions applicable to trials by court.

SEC. 46. The provisions of this chapter respecting trials by jury apply, so far as they are in their nature applicable, to trials by the court. [Civil Code, § 303, S. & C. 1034.]

Parties may submit a matter in controversy.

SEC. 47. Parties to a question which might be the subject of a civil action may, without action, agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any court which would have jurisdiction if an action were brought; but it must appear by affidavit that the controversy is real, and the proceedings in good faith, to determine the rights of the parties. The court shall, thereupon, hear and determine the case, and render judgment, as if an action were pending. [Civil Code, § 495, S. & C. 1094.]

What constitutes the record.

SEC. 48. The case, the submission, and the judgment, shall constitute the record. [Civil Code, § 496, S. & C. 1095.]

The judgment in such case—its reversal and enforcement.

SEC. 49. The judgment shall be with costs, may be enforced, and shall be subject to reversal, in the same manner as if it had been rendered in an action, unless otherwise provided in the submission. [Civil Code, § 497, S. & C. 1095.]

SUBDIVISION IV. TRIAL BY REFEREES.

All issues may be referred by consent.

SEC. 50. All or any of the issues in the action or proceeding, whether of fact or of law, or both, may be referred by the court, or a judge thereof in vacation, upon the written consent of the parties, or upon their oral consent in court entered upon the journal. [Civil Code, § 281, S. & C. 1027; § 287, 69 v. 109.]

When reference may be ordered without consent.

SEC. 51. When the parties do not consent, the court, or a judge thereof in vacation, may, upon the application of a party, or of its or his motion, direct a reference in any case in which the parties are not entitled by the constitution to a trial by jury. [Civil Code, § 282, S. & C. 1027; § 287, 69 v. 109.]

When a reference may be ordered in vacation.

SEC. 52. If a referee die, or be disabled, or refuse to serve, a judge of the court in which the action is pending may, in vacation, appoint another person to take his place, or again direct a reference as provided in the two preceding sections. [Civil Code, § 287, 69 v. 109.]

Trial before referee; report, exception, and judgment.

SEC. 53. The trial by referees shall be conducted in the same manner as a trial by the court. The referees may summon and enforce the attendance of witnesses, administer all necessary oaths in the trial of the case, and grant adjournments, the same as the court; they must state the facts found, and the conclusions of law, separately, and their decision must be given, and may be excepted to and reviewed, in like manner; and their report upon the whole issue shall stand as the decision of the court, and judgment may be entered thereon in the same manner as if the action had been tried by the court. When the reference is to report the facts,

the report shall have the effect of a special verdict; and when the court directs it to be done, the referee shall reduce the testimony of the witnesses to writing, and require them severally to subscribe the same. [Civil Code, § 283, S. & C. 1027; 64 v. 144, § 1, S. & S. 579.]

How referees chosen.

SEC. 54. In all cases of reference, except when an infant is a party, the parties may agree upon a suitable person or persons, not exceeding three, and the reference shall be ordered accordingly; and if the parties do not agree, the court shall appoint referees, not exceeding three, who shall be free from exception. [Civil Code, § 284, S. & C. 1027.]

Probate court can refer only by consent.

SEC. 55. A reference as provided in this chapter cannot be ordered by a probate court, unless by consent of the parties to the reference, and the referees. [Civil Code, § 285, S. & C. 1027.]

Referee must sign bills of exception.

SEC. 56. The referees shall sign any true exceptions taken to an order or decision by them made in the case, and return the same with their report to the court which made the reference. [Civil Code, § 286, S. & C. 1028.]

The oath of the referee.

SEC. 57. The referees must be sworn well and faithfully to hear and examine the cause, and to make a just and true report therein, according to the best of their understanding. The oath may be administered by any person authorized to take depositions. [Civil Code, § 288, S. & C. 1028.]

Compensation of referee.

SEC. 58. The referees shall be allowed such compensation for their services as the court may deem just and proper, which shall be taxed as a part of the costs in the case. [Civil Code, § 289, S. & C. 1028.]

SUBDIVISION V. TRIAL BY MASTER COMMISSIONERS.

Appointment of master commissioners.

SEC. 59. The court of common pleas may appoint, in each county, such number of persons as may be necessary, to be master commissioners, who shall hold their office for the term of three years, unless removed by the court for good cause. The master commissioners so appointed shall have power to administer all oaths required in the discharge of their official duties, or authorized to be administered by the laws of this state. [Civil Code, § 611, S. & S. 573.]

Oath and bond.

SEC. 60. Before entering upon the duties of his office, a master commissioner must be sworn to perform them faithfully; and shall also, with surety, to be approved by the court, execute an undertaking to the state of Ohio, in such sum as the court shall direct, to the effect that he will pay over all moneys, and faithfully discharge the duties of his office; and the court may, at any time, require a master commissioner to give other or further security, and in default thereof by a day fixed by the court, his office shall thereby be vacated. The undertaking shall be filed in the office of the county auditor, and may be sued upon as provided in section two, chapter three, division two, of this title. [Civil Code, § 612, S. & C. 1136.]

Special master commissioner.

SEC. 61. The court may appoint a special master commissioner, who shall be sworn faithfully to discharge his duties, and who may administer all necessary oaths on the hearing before him. [Civil Code, § 611, S. & S. 573.]

What actions may be referred to master commissioner, and how.

SEC. 62. The court, or a judge thereof in vacation, may, upon motion of a party, refer an action in which the parties are not entitled to a trial by jury, to a regular or special master commissioner, to take the testimony in writing, and report the same to the court, and therewith his conclusions on the law and facts involved in the issues, which report may be excepted to by the parties and confirmed, modified, or set aside by the court. [Civil Code, § 611, S. & S. 573.]

Their powers and duties.

SEC. 63. A master commissioner, or special master commissioner, may summon and enforce the attendance of witnesses, and grant adjournments, the same as the court; and, when the court directs it to be done, shall require the witnesses severally to subscribe their testimony. [Civil Code, § 611, S. & S. 573; 64 v. 144, § 1, S. & S. 579.]

Their compensation.

SEC. 64. A master commissioner or special master commissioner shall be allowed such fees as are allowed for similar services to other officers. [Civil Code, § 613, S. & C. 1136.]

SUBDIVISION VI. TRIAL ON APPEAL.

How trial on appeal conducted.

SEC. 65. The district court shall have jurisdiction of certain cases, as hereinafter mentioned, by appeal; and the trial therein shall be conducted in the same manner as in the court of common pleas, and upon the same pleadings, unless amendments are permitted or ordered by the court. [65 v. 211, § 1, S. & S. 589; 50 v. 93, § 11, S. & C. 1161.]

When an appeal may be taken.

SEC. 66. In addition to the cases and matters specially provided for, such appeal may be taken, by a party or other person directly affected, from a judgment or final order in a civil action rendered by the court of common pleas, and of which it had original jurisdiction, if the right to demand a jury therein did not exist; and from an interlocutory order, made by the court of common pleas, or a judge thereof, dissolving an injunction, in a case of which that court had original jurisdiction; but such interlocutory order dissolving such injuncion shall not be suspended by the appeal, except by order of the district court, or any two judges thereof in vacation, on notice to the adverse party. [65 v. 211, § 1, S. & S. 589; 69 v. 71, § 1.]

Notice of appeal; when and how to be given.

SEC. 67. A party desiring to appeal his cause to the district court shall, at the term in which the judgment or order was rendered, enter on the records notice of such intention; and, within thirty days after the rising of the court, give an undertaking, with sufficient surety, to be approved by the clerk of the court, or a judge thereof, as hereinafter provided. [50 v. 93, § 2, S. & C. 1161.]

Who not required to give bond.

SEC. 68. A party in any trust capacity, who has given bond in this state, with sureties according to law, shall not be required to give bond and security to perfect an appeal; and in such cases the clerk, at the expiration of thirty days from the rising of the court, shall, if not otherwise directed, make a transcript, which, together with the papers and pleadings filed in the cause, he shall transmit to the clerk of the district court, as in other cases of appeal. [50 v. 93, § 6, S. & C. 1161.]

When party dies before appeal perfected.

SEC. 69. When a party to a judgment has given notice as aforesaid, and dies within the time limited for the appeal, and before perfecting the same, the administrator or executor of such deceased party, at any time within thirty days after his appointment and qualification, and within ninety days after the death of such party, may cause notice of his intention, as such administrator or executor, to appeal the cause, to be entered upon the journal of the court; and such administrator or executor shall thereby be made a party to the judgment, and the appeal shall be considered as perfected. [50 v. 93, § 2, S. & C. 1161.]

Penalty of bond; when court to fix amount.

SEC. 70. When the judgment is personal against a party for the payment of money only, the penalty of the appeal bond shall be double the amount of the judgment; in all other cases, including cases in which the judgment is against a party for nominal damages and costs, or for costs only, the court shall, at the time of the rendition of the judgment, ascertain and fix the penalty of the appeal bond to be given in the event of an appeal, at such reasonable amount as will, in the opinion of the court, be sufficient to cover the probable loss, damage, or injury, which the other party or parties may sustain by the delay, and the costs and damages which may be awarded in the appellate court. [50 v. 93, § 3, S. & C. 1161.]

Condition of bond; to whom payable.

SEC. 71. The appeal bond shall be payable to the adverse party, or otherwise, as may be directed by the court, where the conflicting interests of the parties require it, and shall be subject to a condition to the effect that the party appealing shall abide and perform the order and judgment of the appellate court, and shall pay all money, costs, and damages, which may be required of or awarded against him by such court. [50 v. 93, § 3, S. & C. 1161.]

How appeal of a separate interest perfected.

SEC. 72. When the interest of a party desiring an appeal is separate and distinct from that of the other party or parties, and he desires to appeal the part of the case in which he is interested, it shall be so allowed by the court, and the penalty and condition of the bond shall be fixed accordingly; and the court shall make such order as to the papers and pleadings, the supplying of copies thereof, and in all other respects, in view of a division of the case for the purpose of appeal, as it deems right and proper. [50 v. 93, § 4, S. & C. 1161.]

SEC. 73. When the surety in the undertaking for the

Amendment or renewal of appeal bond.

appeal has removed from the state, or for any cause whatever is insufficient, or if the undertaking is insufficient in form or amount, the district court, on motion, may order a change or renewal of the undertaking, or a new undertaking to be given, with security, to be approved by said court, or the clerk thereof; and if the order of the court be complied with, the appeal shall not be dismissed, but the court shall hear and determine the cause in the same manner as if the order had not been made; otherwise the appeal shall be dismissed. [54 v. 95, § 1, S. & C. 1169.]

When execution may be stayed.

SEC. 74. The court may, on motion of the party entering notice of appeal, on such reasonable terms as may be necessary for the security of the adverse party, direct execution to be stayed for thirty days. [50 v. 93, § 6, S. & C. 1161.]

Appeal suspends judgment; transfer of papers, etc.

SEC. 75. When an appeal is granted, and bond given, the judgment is thereby suspended; and the clerk shall forthwith make an authenticated transcript of the docket and journal entries, and of the final judgment; which transcript, together with the original papers and pleadings, he shall deliver at the office of the clerk of the district court, on or before the first day of the term thereof next after the appeal is perfected; and either party may require a full record to be made of the case in the court below, at his own costs. [50 v. 93, § 9, S. & C. 1161.]

Lien of judgment to continue.

SEC. 76. When the party against whom a judgment is rendered appeals his cause to the district court, the lien of the opposite party on the real estate of the appellant, created by the judgment, shall not be removed or vacated by the appeal; but the real estate of the appellant shall be bound, in the same manner as if the appeal had not been taken, until the final determination of the cause in the district court. [50 v. 93, § 7, S. & C. 1161.]

Costs on appeal.

SEC. 77. If a plaintiff appealing do not recover a greater sum in the district court than in the court from which appeal was taken, exclusive of costs and interest accrued since the rendition of the judgment, he shall pay all costs that accrue in the district court; and if the defendant, in any personal action, appeal to the district court, and the plaintiff recover the same or a larger sum than was recovered in the court below, exclusive of costs, the district court shall render judgment for the sum so recovered, with costs of suit. [50 v. 93, § 8, S. & C. 1161.]

Damages when appeal is for delay merely.

SEC. 78. When the appellate court renders substantially the same judgement which was rendered in the court below, damages may be awarded as follows: When the judgment is for the payment of money, the appellant shall be adjudged to pay the appellee, or party delayed of payment by the appeal, damages at the rate of five per cent. on the amount adjudged in the court below, unless the appellate court is satisfied that there was reasonable ground for the appeal; and in such case, when the court is satisfied that the appeal was for the purpose of delay merely, the damages

adjudged shall be at the rate of ten per cent; in all other cases, including those where the judgment or decree is for nominal damages and costs, or costs only, unless the appellate court is satisfied that there was reasonable and probable ground for the appeal, damages shall be adjudged to the appellee, or party affected by the appeal, in such specific sum as may be deemed reasonable, not exceeding two hundred dollars. [50 v. 93, § 5, S. & C. 1161.]

Mandate to common pleas.

SEC. 79. When the district court makes a final order, or renders final judgment, it may enforce the same by process issued therefrom, or may remand the same to the court of common pleas for execution or other process; the clerk of the district court shall certify the same to the court of common pleas, and the clerk of that court, on the receipt of the certified transcript, shall immediately enter the same on the journal; and the judgment or order so entered, unless otherwise directed by the district court, shall, for the purpose of execution, and other process, stand as the judgment of the court of common pleas. [67 v. 29, § 1.]

CHAPTER 3.

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SUBDIVISION I. COMPETENCY OF WITNESSES AND EVIDENCE.

Who are competent witnesses.

SECTION 1. All persons are competent witnesses, except those of unsound mind, and children under ten years of age who appear incapable of receiving just impressions of the facts and transactions respecting which they are examined, or of relating them truly. [Civil Code, § 310, S. & C. 1035; § 314, 67 v. 113.]

Privileged communications and acts.

SEC. 2. The following persons shall not testify in certain respects:

1. An attorney, concerning a communication made to him by his client in that relation, or his advice to his client; or a physician, concerning a communication made to him by his patient in that relation or his advice to his patient; but the attorney or physician may testify by express consent of the client or patient; and if the client or patient voluntarily

testify, the attorney or physician may be compelled to testify on the same subject.

2. A clergyman or priest, concerning a confession made to him in his professional character, in the course of discipline enjoined by the church to which he belongs.

3. Husband or wife, concerning any communication made by one to the other, or act done by either in the presence of the other, during coverture, unless the communication was made, or act done, in the known presence or hearing of a third person competent to be a witness; and the rule shall be the same if the marital relation has ceased to exist.

4. A person who assigns his claim or interest, concerning any matter in respect to which he would not, if a party, be permitted to testify.

5. A person who, if a party, would be restricted in his evidence under section three of this chapter, shall, where the property or thing is sold or transferred by an executor, administrator, guardian, trustee, heir, devisee, or legatee, be restricted in the same manner in any action or proceeding concerning such property or thing. [Civil Code, § 314, 67 v. 113; § 315, S. & C. 1038.]

When a party shall not testify.

SEC. 3. A party shall not testify where the adverse party is the guardian or trustee of either a deaf and dumb or an insane person, or of a child of a deceased person, or is an executor or administrator, or claims or defends as heir, grantee, assignee, devisee, or legatee, of a deceased person, except—

1. To facts which occurred subsequent to the appointment of the guardian or trustee of an insane person, and, in the other cases, subsequent to the time the decedent, grantor, assignor, or testator died.

2. When the action of [or] proceeding relates to a contract made through an agent, by a person since deceased, and the agent testifies, a party may testify on the same subject.

3. If a party, or one having a direct interest, testify to transactions or conversations with another party, the latter may testify as to the same transactions or conversations.

4. If a party offer evidence of conversations or admissions of the opposite party, the latter may testify concerning the same conversations or admissions.

5. In an action or proceeding by or against a partner or joint contractor, the adverse party shall not testify to transactions with, or admissions by, a partner or joint contractor since deceased, unless made in the presence of the surviving partner or joint contractor; and this rule shall be applied without regard to the character in which the parties sue or are sued.

6. If the claim or defense is founded on a book account, a party may testify that the book is his account-book, that it is a book of original entries, that the entries therein were made by himself, a person since deceased, or a disinterested person non-resident of the county; whereupon the book shall be competent evidence; and such book may be admitted in evi-

dence in any case, without regard to the parties, upon like proof by any competent witness.

7. If a party, after testifying orally, die, the evidence may be proved, by either party, on a further trial of the case; whereupon the opposite party may testify as to the same matters.

8. If a party die, and his deposition be offered in evidence, the opposite party may testify as to all competent matters therein.

Nothing in this section contained shall apply to actions for causing death, or actions or proceedings involving the validity of a deed, will, or codicil; and where a case is plainly within the reason and spirit of the last three sections, though not within the strict letter, their principles shall be applied. [Civil Code, § 313, 74 v. 161; 51 v. 374, § 1, S. & C. 552.]

Opposite party may be compelled to testify.

SEC. 4. A party may compel the adverse party to testify orally, or by deposition, as any other witness may be thus compelled. [Civil Code, § 312, S. & C. 1037.]

How the law of other states, etc., proved.

SEC. 5. Printed copies of written law enacted by any other state, a territory, or a foreign government, purporting or proved to have been published by the authority thereof, or proved to be commonly admitted as evidence of the existing law in the courts or tribunals of such state, territory, or government, shall be admitted by the courts and officers of this state, on all occasions, as presumptive evidence of such law. The unwritten or common law of any other state, or of a territory, or foreign government, may be proved as facts by parol evidence; and the books of reports of cases adjudicated in their courts may also be admitted as presumptive evidence of such law. [Civil Code, § 362, S. & C. 1046.]

How copies of certain public documents made competent evidence.

SEC. 6. Copies of papers, books, and records, on file or deposited, by virtue of any law, in the office of the governor or secretary of state, and certified by the secretary of state under the great seal, or in the office of the board of public works, certified by the president of the board, or in the office of the auditor of state, certified by him under his seal, or in the office of the surveyor of lands lying within the Virginia military district, certified and sworn to by him, and copies of copies of entries, surveys, and plats of lands in the Virginia military district, procured to be made by the commissioners of any county, and deposited with the recorder of such county, and certified by him, and the copies of such entries, surveys, and plats now in the office of the auditor of Union county, shall be competent evidence, and have the same force and effect as the originals would if produced. [48 v. 35, § 1, S. & C. 557; 45 v. 54, § 1, S. & C. 556; 29 v. 123, § 1, S. & C. 555; 74 v. 217, § 4; 48 v. 69, § 16, S. & C. 556.]

SUBDIVISION II. MEANS OF SECURING ATTENDANCE.

SEC. 7. The clerks of the several courts, and judges of the probate courts, shall, on application of a person having a

cause or other matter pending in court, issue a subpœna for witnesses, under the seal of the court, inserting all the names required by the applicant in one subpœna, which may be served by the sheriff, coroner, or any constable of the county, or by the party, or any other person. When a subpœna is not served by the sheriff, coroner, or constable, proof of service shall be shown by affidavit; but no costs of serving the same shall be allowed except when served by an officer. [Civil Code, § 316, S. & C. 1038.]

How subpœna procured, and by whom served.

SEC. 8. The subpœna shall be directed to a person therein named, requiring him to attend at a particular time and place, to testify as a witness; and it may contain a clause directing the witness to bring with him any book, writing, or other thing under his control, which he may be compelled to produce as evidence. [Civil Code, § 317, S. & C. 1039.]

What subpœna to contain.

SEC. 9. When the attendance of a witness before an officer authorized to take depositions is required, the subpœna shall be issued by such officer. [Civil Code, § 318, S. & C. 1039.]

Subpœna on taking depositions.

SEC. 10. The subpœna shall be served either by reading, or by copy delivered to the witness, or left at his usual place of residence; but such copy need not contain the name of any other witness. [Civil Code, § 319, S. & C. 1039.]

How subpœna served.

SEC. 11. A witness shall not be compelled to go out of the county where he resides, or may be subpœnaed, to testify on the trial of a [civil] action, or to give his deposition. [Civil Code, § 320, S. & C. 1039.]

Where witness can not be compelled to attend.

SEC. 12. A witness, after the case is called for trial, and before he is sworn, may demand his traveling fees, and fees for one day's attendance, and if the same are not paid, he shall not be obliged to testify; and at the commencement of the trial each day after the first day, he may demand his fees for that day's attendance, and if the same are not paid, he shall not be compelled to remain. The clerk shall note such payment of fees on the witness book. [Civil Code, §§ 321, 330, S. & C. 1039, 1040.]

Right of witness to demand fees in advance.

SEC. 13. Disobedience of a subpœna, a refusal to be sworn, except in case of a refusal to pay fees on demand, a refusal to answer as a witness or to subscribe a deposition, when lawfully ordered, may be punished as a contempt of the court or officer by whom the attendance or testimony of the witness is required. [Civil Code, § 322, S. & C. 1039.]

Contempt of court by witness.

SEC. 14. When a witness fails to attend in obedience to a subpœna, the court or officer before whom his attendance is required may issue an attachment to the sheriff, coroner, or a constable of the county, commanding him to arrest and bring the person therein named before such court or officer, at a time and place to be fixed in the attachment, to give his testimony, and answer for the contempt. If the attachment is not for immediately bringing the witness before the court or officer, a sum may be fixed in which the witness may give an undertaking, with surety, for his appearance.

Attachment against witness.

Such sum shall be indorsed on the back of the attachment; and if no sum is so fixed and indorsed, it shall be one hundred dollars. If the witness was not personally served, the court may, by a rule, order him to show cause why an attachment should not issue against him. [Civil Code, § 323, S. & C. 1039.]

Proceedings for contempt of court by witness, and punishment.

SEC. 15. The punishment for the contempt mentioned in section thirteen of this chapter shall be as follows: When the witness fails to attend in obedience to the subpœna, the court or officer may fine him in a sum not exceeding fifty dollars. In other cases the court or officer may fine the witness in a sum not exceeding fifty nor less than five dollars, or may imprison him in the county jail, there to remain until he submit to be sworn, testify, or give his deposition. The fine improved [imposed] by the court shall be paid into the county treasury, and that imposed by the officer shall be for the use of the party for whom the witness was subpœnaed. The witness shall also be liable to the party injured for any damages occasioned by his failure to attend, or his refusal to be sworn, to testify, or to give his deposition. [Civil Code, § 324, S. & C. 1039.]

How witness imprisoned by officer released.

SEC. 16. A witness so imprisoned by an officer may apply to a judge of the supreme court, court of common pleas, or probate court, who may discharge him, if it appear that his imprisonment is illegal. [Civil Code, § 325, S. & C. 1040.]

Proceedings on the arrest of a witness.

SEC. 17. Every attachment for the arrest or order of commitment to prison of a witness, by a court or officer, pursuant to this chapter, must be under the seal of the court or officer, if he have an official seal, and must specify particularly the cause of the arrest or commitment; and if the commitment is for a refusal to answer a question, such question must be stated in the order. The order of commitment may be directed to the sheriff, coroner, or any constable of the county where the witness resides, or is at the time, and shall be executed by committing him to the jail of the county, and delivering a copy of the order to the jailer. [Civil Code, § 326, S. & C. 1040.]

Examination of a witness in prison.

SEC. 18. A person confined in prison in this state may, by order of a court of record, be required to be produced for oral examination in the county where he is imprisoned; but in all other cases his examination must [be] by deposition. [Civil Code, § 327, S. & C. 1040.]

Custody of prisoner while deposition being taken.

SEC. 19. While a prisoner's deposition is being taken, he shall remain in the custody of the officer having him in charge, who shall afford reasonable facilities for the taking of the deposition. [Civil Code, § 328, S. & C. 1040.]

Witness not to be sued and served out of his county.

SEC. 20. A witness shall not be liable to be sued in a county in which he does not reside, by being served with a summons in such county while going, returning, or attending in obedience to a subpœna. [Civil Code, § 329, S. & C. 1040.]

Oath of witness.

SEC. 21. Before testifying, the witness shall be sworn to testify the truth, the whole truth, and nothing but the truth. [Civil Code, § 331, S. & C. 1040.]

SUBDIVISION III. MODES OF TAKING TESTIMONY.

How testimony of witness taken.

SEC. 22. The testimony of witnesses may be taken—
1. By affidavit.
2. By deposition.
3. By oral examination. [Civil Code, § 332, S. & C. 1040.]

Kinds of testimony defined.

SEC. 23. An affidavit is a written declaration under oath, made without notice to the adverse party; a deposition is a written declaration under oath, made upon notice to the adverse party; oral testimony is that delivered from the lips of the witness. [Civil Code, §§ 333, 334, 335, S. & C. 1040, 1041.]

For what purposes affidavit may be used.

SEC. 24. An affidavit may be used to verify a pleading, to prove the service of a summons, notice, or other process in an action, to obtain a provisional remedy, an examination of a witness, a stay of proceedings, or upon a motion, and in any other case permitted by law. [Civil Code, § 336, S. & C. 1041.]

Before whom affidavit may be made.

SEC. 25. An affidavit may be made in or out of this state, before any person authorized to take depositions, and must be authenticated in the same way as depositions, except as provided in section fifty-one, chapter seven, of this division. [Civil Code, § 337, S. & C. 1041.]

When deposition may be used.

SEC. 26. The deposition of a witness may be used only in the following cases:
1. When the witness does not reside in, or is absent from, the country [county] where the action or proceeding is pending, or by change of venue, is sent for trial.
2. When the witness is dead, or, from age, infirmity, or imprisonment, is unable to attend court.
3. When the testimony is required upon a motion, or where the oral examination of the witnesses [witness is] not required. [Civil Code, § 338, S. & C. 1041; 52 v. 27, S. & C. 1170.]

When deposition may be taken.

SEC. 27. Either party may commence taking testimony by deposition, at any time after service upon the defendant. [Civil Code, § 339, S. & C. 1041.]

Testimony taken by referee, etc., may be used as a deposition.

SEC. 28. Testimony taken in an action or proceeding, on the order of a court, by a referee, master commissioner, or special master commissioner, subscribed by the witness, and reported to the court by the officer, may be used as a deposition taken in the case. [64 v. 144, § 1; S. & S. 579.]

Deposition in foreign suit.

SEC. 29. Depositions may also be taken when the testimony is required in an action, cause, or matter pending before any court or authority without this state. [52 v. 27, S. & C. 1170.]

SEC. 30. Depositions may be taken in this state before a judge or the clerk of the supreme court, a judge or clerk of the court of common pleas, a probate judge, justice of the peace,

Officers authorized to take depositions.

notary public, mayor or chief magistrate of a municipal corporation, master commissioner, or any person empowered by a special commission; but depositions taken in this state, to be used therein, must be taken by an officer or person whose authority is derived within the state; and if to be used out of the state, they may be taken before a commissioner or officer who derives his authority from the state, district, or territory in which they are to be used. [Civil Code, § 340, S. & C. 1041; 52 v. 27, S. & C. 1170.]

Who may take depositions out of the state.

SEC. 31. Depositions may be taken out of this state before a judge, justice, or chancellor of any court of record, a justice of the peace, notary public, mayor or chief magistrate of any city or town corporate, a commissioner appointed by the governor of this state to take depositions, or any person authorized by a special commission from this state. [Civil Code, § 341, S. & C. 1041.]

Who can not take depositions.

SEC. 32. The officer before whom depositions are taken must not be a relative or attorney of either party, or otherwise interested in the event of the action or proceeding. [Civil Code, § 342, S. & C. 1042.]

Commission to take depositions.

SEC. 33. Any court of record of this state, or a judge thereof, may grant a commission to take depositions within or without the state. Such commission must be issued by the clerk, and under the seal, of the court granting the same; the person or persons to whom it is issued must be named therein; and depositions under it must be taken upon written interrogatories, unless the parties otherwise agree. [Civil Code, § 343, S. & C. 1043.]

Notice to take depositions—requisites—service.

SEC. 34. Written notice of the intention to take a deposition shall be given to the adverse party, except in cases where it is to be taken under a special commission, in which shall be specified the action or proceeding, the name of the court or tribunal in which the deposition is to be used, and the time when and place where it will be taken; and in case the deposition of a party to the suit be taken, it shall not be used in his own behalf unless the notice specified that his deposition would be taken. The notice shall be served upon the adverse party, his agent or attorney of record, or left at the usual place of abode of such party or his agent; and the deposition shall only be used against such parties as are served with notice in one of the modes prescribed. The notice shall be served so as to allow the adverse party sufficient time, exclusive of Sundays, the day of service, and one day for preparation, to travel by the usual routes and modes of conveyance to the place named in the notice; and the examination may, if so stated in the notice, be adjourned from day to day. [Civil Code, § 344, S. & S. 560.]

Notice by publication.

SEC. 35. When the party against whom a deposition is to be read is absent from or a non-resident of the state, and has no agent or attorney of record therein, he may be notified of the taking of the deposition by publication. The publication must be made for three consecutive weeks, in some news-

paper printed in the county where the action or proceeding is pending, if one is printed therein; and if no newspaper is printed therein, then in some newspaper printed in the state, and of general circulation in that county. The publication must contain all that is required in a written notice, and may be proved in the manner prescribed in section seventeen, chapter six, division two, of this title. [Civil Code, § 345, S. & C. 1042.]

By whom deposition to be written.

SEC. 36. Then [the] deposition shall be written in the presence of the officer before whom it is taken, either by the officer, the witness, or some disinterested person, and subscribed by the witness. [Civil Code, § 346, S. & C. 1042.]

Deposition to be sealed up, etc., and transmitted to clerk.

When opened.

SEC. 37. The deposition so taken shall be sealed in an envelope indorsed with the title of the cause, and the name of the officer before whom it was taken; and such officer shall address and transmit the same to the clerk of the court where the action or proceeding is pending. It shall remain under seal until opened by the clerk by order of the court, or at the request of a party to the action or proceeding, or his attorney. [Civil Code, § 347, S. & C. 1042.]

Before what courts depositions may be used.

SEC. 38. Depositions taken pursuant to this chapter shall be admitted in evidence on the trial of any civil action or proceeding pending before a justice of the peace, or mayor or other judicial officer of a municipal corporation, or before arbitrators, a referee, or master; and such deposition shall be sealed up, indorsed with the title of the action or proceeding, the name of the officer taking the same, and addressed and transmitted by such officer to such justice, mayor or other judicial officer, arbitrators, referee, or master. [Civil Code, § 348, S. & C. 1043.]

When deposition may be used in other cases.

SEC. 39. A deposition may be read in any stage of the action or proceeding, or in any other action or proceeding upon the same matter between the same parties, subject, however, to such exceptions as may be taken thereto under the provisions of this chapter. [Civil Code, § 349, S. & C. 1043.]

Certificate of authentication.

SEC. 40. Depositions taken pursuant to this chapter, by a judicial or other officer herein authorized to take depositions, having a seal of office, whether resident in this state or elsewhere, shall be admitted in evidence upon the certificate and signature of such officer, under the seal of the court of which he is an officer, or his official seal; and no other or further act of authentication shall be required. If the officer before whom the same is taken have no official seal, the depositions, if not taken in this state, shall be certified and signed by such officer, and shall be further authenticated, either by parol proof adduced in court, or by the certificate and seal of the secretary or other officer of state who is the custodian of the great seal of the state, or the certificate and official seal of the clerk or prothonotary of any court of the state where taken, attesting that such officer was, at the time of taking the same, authorized, within the meaning of this chapter, to take the same. But if the deposition is taken

within this state by an officer not having a seal, or within or without this state under a special commission, it shall be sufficiently authenticated by the official signature of the officer or commission before whom it is taken. And in all cases where the deposition is not certified according to law, the fact neglected to be certified may be shown by parol proof. [Civil Code, § 350, S. & C. 1043; 57 v. 41, § 1, S. & C. 1171.]

Certificate of officer.

SEC. 41. The officer before whom the deposition is taken shall annex thereto a certificate showing the following facts:

1. That the witness was first sworn to testify the truth, the whole truth, and nothing but the truth.

2. That the deposition was reduced to writing by some proper person, naming him.

3. That the deposition was written and subscribed in the presence of the officer certifying thereto.

4. That the deposition was taken at the time and place specified in the notice. But if the deposition is taken out of the state, by an officer authorized to take the same, the certificate may be in the foregoing form, or in the form authorized by the laws of the place where taken; and in the latter case the certificate shall be deemed prima facie as made in accordance with the laws of the place where made. [Civil Code, § 351, S. & C. 1043.]

When deposition may be read.

SEC. 42. When a deposition is offered to be read in evidence, it must appear to the satisfaction of the court that for a cause specified in section twenty-six of this chapter, the attendance of the witness cannot be procured. [Civil Code, § 352, S. & C. 1044.]

When deposition to be filed.

SEC. 43. Every deposition intended to be read in evidence on the trial must be filed at least one day before the day of trial. [Civil Code, § 353, S. & C. 1044.]

Fees for taking depositions.

SEC. 44. The following fees shall be allowed for taking depositions in this state, viz: Swearing each witness, four cents; for each subpœna, attachment, or order of commitment, fifty cents; for each hundred words contained in the deposition and certificate, ten cents; and the officer may retain the deposition until such fees are paid. The officer shall also tax the costs of the sheriff or other officer who serves the process aforesaid, and fees of the witnesses, and may also, if directed by a person entitled thereto, retain such depositions until his fees are paid. [Civil Code, § 354, S. & C. 1044.]

Exception to depositions to be filed in writing.

SEC. 45 Exceptions to depositions shall be in writing, shall specify the grounds of objection, and be filed with the papers in the cause. [Civil Code, § 355, S. & C. 1044.]

Must be filed before trial.

SEC. 46. No exception other than for incompetency or irrelevancy shall be regarded, unless made and filed before the commencement of the trial. [Civil Code, § 356, S. & C. 1044.]

Court to decide exceptions before trial.

SEC. 47. The court shall, on motion of either party, hear and decide questions arising on exceptions to depositions before the commencement of the trial. [Civil Code, § 357, S. & C. 1045.]

When objections waived.

SEC. 48. Errors of the court in its decisions upon exceptions to depositions are waived unless excepted to. [Civil Code, § 358, S. & C. 1045.]

SUBDIVISION IV. ADMISSION AND INSPECTION OF DOCUMENTS.

Party may be required to admit a paper to be genuine, or pay expenses of proof.

SEC. 49. Either party may exhibit to the other, or to his attorney, at any time before the trial, any paper or document material to the action, and request an admission in writing of its genuineness. If the adverse party, or his attorney, fail to give the admission in writing within four days after the request, and if the party exhibiting the paper or document be afterward put to any cost or expense to prove its genuineness, and the same be finally proved or admitted on the trial, such cost and expenses, to be ascertained at the trial, shall be paid by the party refusing to make the admission, unless it appear to the satisfaction of the court that there were good reasons for the refusal. [Civil Code, § 359, S. & C 1045.]

Party may be compelled to produce books and writings.

SEC. 50. The court in which an action is pending may, on motion, and on reasonable notice thereof, require the parties to produce books and writings in their possession or power which contain evidence pertinent to the issue, in cases and under circumstances where they might heretofore be compelled to produce the same by the ordinary rules of proceeding in chancery; and if the plaintiff fail to comply with such order to produce books or writings, the court may, on motion, give judgment for the defendant as in case of nonsuit; and if a defendant fail to comply with such order to produce books or writings, the court, on motion, may give judgment against him by default. [Civil Code, § 360, S. & C. 1045.]

Party entitled to inspection and copy of books and documents.

SEC. 51. Either party, or his attorney, may also demand of the adverse party [an] and inspection and copy, or permission to take a copy, of a book, paper, or document in his possession, or under his control, containing evidence relating to the merits of the action or defense. Such demand shall be in writing, specifying the book, paper, or document, with sufficient particularity to enable the other party to distinguish it; and if compliance with the demand within four days be refused, the court or judge, on motion and notice to the adverse party, may, in its discretion, order the adverse party to give the other, within the time specified, an inspection and copy, or permission to take a copy of such book, paper, or document; and on failure to comply with such order, the court may exclude the paper or document from being given in evidence, or if wanted as evidence by the party applying, may direct the jury to presume it to be such

as the party, by affidavit, alleges it to be. This section is not to be construed to prevent a party from compelling another to produce any book, paper, or document when he is examined as a witness. [Civil Code, § 360, S. & C. 1045.]

When court may appoint master to inspect books, papers, etc.

SEC. 52. If the party in possession of any such book, paper, writing, or document, allege that the same, or any part thereof, is of mere private interest, or of such character that it ought not to be produced, or an inspection or copy thereof allowed or taken, the court may, in its discretion, on motion of either party, direct a private examination thereof by a master; and if the master find that such book, paper, writing, or document contains matter pertinent to the case, and proper to be produced, inspected, or copied, he shall report the same to the court, or a copy of such part as he finds pertinent to the case, and proper to be produced, inspected, or copied; and the book, paper, writing, or document, or part thereof so reported, shall be admitted in evidence on the trial, unless excluded by the court for proper cause. [Civil Code, § 360, S & C. 1045.]

How copies of written instrument obtained.

SEC. 53. Either party, or his attorney, shall, if required, deliver to the other party or his attorney a copy of any instrument of writing whereon the action or defense is founded, or which he intends to offer in evidence at the trial. If the plaintiff or defendant refuse to furnish the copy required, the party so refusing shall not be permitted to give in evidence at the trial the original, of which a copy has been refused. This section shall not apply to a paper, a copy of which is filed with a pleading, as provided in section twenty-nine, chapter seven, division two, of this title. [Civil Code, § 361, S. & C. 1046.]

Action for discovery.

SEC 54. When a person claiming to have a cause of action, or a defense to an action commenced against him, is unable, without a discovery of the fact from the adverse party, to file his petition or answer, such person may bring his action for discovery, setting forth in his petition the necessity of such discovery, and the grounds thereof, and such interrogatories relating to the subject matter of the discovery as may be necessary to procure the discovery sought, which, if not demurred to, shall be fully and directly answered under oath by the defendant; upon the final disposition of the action, the costs thereof shall be taxed in such manner as the court deems equitable. [64 v. 23, § 3; S. & C. 1154.]

SUBDIVISION V. VARIANCE.

When variance deemed material; amendment.

SEC. 55. No variance between the allegation in a pleading, and the proof, shall be deemed material, unless it has actually misled the adverse party to his prejudice, in maintaining his action or defense upon the merits. Whenever it is alleged that a party has been so misled, that fact must be proved to the satisfaction of the court, and it must also be shown in what respect he has been misled; and there-

upon the court may order the pleading to be amended, upon such terms as are just. [Civil Code, § 131, S. & C. 987.]

Amendment without costs, when variance not material.

SEC. 56. When the variance is not material, the court may direct the fact to be found according to the evidence, and may order an immediate amendment without costs. [Civil Code, § 132, S. & C 989.]

Failure of proof not a variance.

SEC. 57. When the allegation of the claim or defense, to which the proof is directed, is unproved, not in some particular or particulars only, but in its general scope and meaning, it is not to be deemed a case of variance within the last two sections, but a failure of proof. [Civil Code, § 133, S. & C. 989.]

CHAPTER 4.

EXCEPTIONS.

SECTION
1. What is an exception.
2. When exception must be made.
3. How exception must be stated.
4. How taken when facts appear of record.
5. When bill of exceptions may be taken.
6. How to be taken; filing and record.
7. Immaterial exceptions.
8. When exceptions may be withdrawn.

What is an exception.

SECTION 1. An exception is an objection taken to a decision of the court upon a matter of law. [Civil Code, § 290, S. & C. 1028.]

When exception must be made.

SEC. 2. The party objecting to the decision must except at the time the decision is made; and time may be given to reduce the exception to writing, but not beyond the term. [Civil Code, § 291, S. & C. 1028.]

How exception must be stated.

SEC. 3. No particular form of exception is required. The exception must be stated, with the facts, or so much of the evidence, as is necessary to explain it, and no more, and the whole as briefly as possible. [Civil Code, § 292, S. & C. 1028.]

How taken when facts appear of record.

SEC. 4. When the decision objected to is entered on the record, and the grounds of objection appear in the entry, the exception may be taken by the party causing to be noted at the end of the entry that he excepts. [Civil Code, § 293, S. & C. 1029.]

When bill of exceptions may be taken.

SEC. 5. When the decision is not entered on the record, or the grounds of objection do not sufficiently appear in the entry, or the exception is to the opinion of the court on a motion to direct a non-suit, to arrest the testimony from the jury, or for a new trial for misdirection by the court to the jury, or because the verdict, or, if a jury was waived, the finding of the court, is against law or the evidence, the party excepting must reduce his exception to writing, and present it to the court for allowance. [Civil Code, § 294, S. & C. 1029; 73 v. 140, § 1.]

How to be taken; filing and record.

SEC. 6. If the exception be true, or, if it be not true, then after it is corrected, a majority of the judges composing the court must allow and sign it before the case proceeds, or, of the party consent, within thirty days after the term; the bill of exceptions shall be filed with the pleadings, and, if the party require it, made a part of the record, but not spread on the journal; and if it is to be signed after the term, the journal must be kept open, and the allowance and signing thereof entered thereon as of the term. [Civil Code, § 294, S. & C. 1029; 73 v. 140, § 1.]

Immaterial exceptions.

SEC. 7. No exception shall be regarded unless it is material, and prejudicial to the substantial rights of the party excepting. [Civil Code, § 295, S. & C. 1029.]

When exceptions may be withdrawn.

SEC. 8. Exceptions taken to the decision of a court of record may, by leave of such court, be withdrawn from the files by the party taking the same, at any time before proceedings in error are commenced, and before the exceptions are recorded. [Civil Code, § 296, S. & C. 1030.]

CHAPTER 5.

NEW TRIAL.

SECTION
1. For what cause a new trial may be granted.
2. When new trial will not be granted.
3. When application must be made.
4. How to be made.
5. How and where to be made after the term.

For what causes a new trial may be granted.

SECTION 1. A new trial is a re-examination, in the same court, of an issue of fact, after a verdict by a jury, a report of a referee or master, or a decision by the court. The former verdict, report, or decision, shall be vacated, and a new trial granted, on the application of the party aggrieved, for any of the following causes affecting materially the substantial rights of such party:

1. Irregularity in the proceedings of the court, jury, referee, master, or prevailing party, or any order of the court or referee, or abuse of discretion, by which the party was prevented from having a fair trial.

2. Misconduct of the jury or prevailing party.

3. Accident or surprise, which ordinary prudence could not have guarded against.

4. Excessive damages, appearing to have been given under the influence of passion or prejudice.

5. Error in the assessment of the amount of recovery, whether too large, or too small, where the action is upon a contract, or for the injury or detention of property.

6. That the verdict, report, or decision, is not sustained by sufficient evidence, or is contrary to law.

7. Newly discovered evidence, material for the party applying, which he could not, with reasonable diligence, have discovered, and produced at the trial.

8. Error of law occurring at the trial, and excepted to by the party making the application. [Civil Code, § 297, S. & C. 1030.]

When new trial will not be granted.

SEC. 2. A new trial shall not be granted on account of the smallness of damages, in an action for an injury to the person or reputation, nor in any other action where the damages equal the actual pecuniary injury sustained. (Civil Code, § 298, S. & C. 1032.)

When application must be made.

SEC. 3. The application for a new trial must be made at the term the verdict, report, or decision is rendered; and, except for the cause of newly discovered evidence, material for the party applying, which he could not with reasonable diligence have discovered, and produced at the trial, shall be made within three days after the verdict or decision is rendered, unless such party is unavoidably prevented from filing the same within such time. [Civil Code, § 299, S. & C. 1033.]

How application to be made.

SEC. 4. The application must be by motion, upon written grounds, filed at the time of making the motion. The causes enumerated in subdivisions two, three, and seven, section one, must be sustained by affidavits showing their truth, and may be controverted by affidavits. (Civil Code, § 300, S. & C. 1033.)

How and when application to be made after the term.

SEC. 5. When the grounds for a new trial could not, with reasonable diligence, have been discovered before, but are discovered after the term at which the verdict, report, or decision, was rendered or made, the application may be made by petition, filed as in other cases, not later than the second term after the discovery; whereupon a summons shall issue, be returnable and served, or publication made, as prescribed in section sixteen, chapter six, division two, of this title. The facts stated in the petition shall be considered as denied without answer; and if the service be complete in vacation, the case shall be heard and summarily decided at the ensuing term; and if in term, it shall be heard and decided after the expiration of twenty days from such service. The case shall be placed on the trial-docket, and the witnesses shall be examined in open court, or their depositions taken, as in other cases; but no such petition shall be filed more than one year after the final judgment was rendered. [Civil Code, § 301, S. & C. 1033.]

DIVISION IV. JUDGMENT.

CHAPTER 1. JUDGMENT IN GENERAL.
CHAPTER 2. JUDGMENT UPON FAILURE TO ANSWER.
CHAPTER 3. JUDGMENT BY CONFESSION.
CHAPTER 4. MANNER OF GIVING AND ENTERING JUDGMENT.
CHAPTER 5. JUDGMENT FOR COSTS, AND ITS ENFORCEMENT.
CHAPTER 6. NEW TRIAL, AND OTHER RELIEF AFTER JUDGMENT.
CHAPTER 7. REVIVOR OF, AND NEW PARTIES TO JUDGMENT.

CHAPTER 1.

JUDGMENT IN GENERAL.

SECTION
1. What is a judgment, and what an order.
2. Judgment may be given for or against any party.
3. And against defendants at different times.
4. The court may dismiss for want of prosecution.
5. When action may be dismissed without prejudice.
6. When defendant may have his claim adjudicated.
7. Mortgaged property to be sold.
8. Proceedings when mortgaged property situate in more than one county.
9. When judgment to operate as a conveyance.
10. Judgment against married woman.

What is a judgment and what an order.

SECTION 1. A judgment is the final determination of the rights of the parties in action. A direction of a court or judge, made or entered in writing, and not included in a judgment, is an order. [Civil Code, §§ 370, 509, S. & C. 1048, 1099.]

Judgment may be given for or against any party.

SEC. 2. Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants; and by the judgment of the court may determine the ultimate rights of the parties on either side, as between themselves, and grant to the defendant any affirmative relief to which he is entitled. [Civil Code, § 371, S. & C. 1048.]

And against defendants at different times.

SEC. 3. In an action against several defendants, the court may, in its decretion, render judgment against one or more of them, leaving the action to proceed against the others, whenever a several judgment is proper. [Civil Code, § 371, S. & C. 1048.]

The court may dismiss for want of prosecution.

SEC. 4. The court may dismiss the petition with costs, in favor of one or more defendants, in case of unreasonable neglect on the part of the plaintiff to serve the summons on other defendants, or to proceed in the cause against the defendant or defendants served. [Civil Code, § 371, S. & C. 1048.]

SEC. 5. An action may be dismissed without prejudice to a future action—

When action may be dismissed without prejudice.

1. By the plaintiff, before the final submission of the case to the jury, or to the court, where the trial is by the court.
2. By the court, where the plaintiff fails to appear on the trial.
3. By the court, for the want of necessary parties.
4. By the court, on the application of some of the defendants, where there are others whom the plaintiff fails to prosecute with diligence.
5. By the court, for disobedience by the plaintiff of an order concerning the proceedings in the action.
6. By the plaintiff in vacation, on payment of costs; and the clerk, in such case, shall forthwith make an entry thereof on the journal; whereupon the dismissal shall take effect; but this clause shall not apply to a petition in error, or a case in which a counterclaim or set-off has been filed.

In all other cases the decision must be upon the merits, upon the trial of the action. [Civil Code, § 372, S. & C. 1049; 59 v. 39, S. & S. 601.]

When defendant may have his claim adjudicated.

SEC. 6. If a set-off or counterclaim be pleaded, the defendant shall have the right of proceeding to the trial of his claim, although the plaintiff may have dismissed his action, or fail to appear. [Civil Code, § 373, S. & C. 1050.]

Mortgaged property to be sold.

SEC. 7. In the forcelosure of a mortgage, a sale of the premises shall be ordered. [Civil Code, § 374, 67 v. 114.]

Proceedings where mortgaged property situate in more than one county.

SEC. 8. When the mortgaged property is situated in more than one county, the court may order the sheriff or master of each to make sale of the property in his county, or may direct one officer to sell the whole; the court may direct that the property, when it consists of a single tract, be sold as one tract, or in separate parcels; the court shall direct whether appraisers shall be selected for each county, or one set for all; and the court shall also direct whether publication of the sale shall be made in all the counties, or in one county only. [Civil Code, § 374, 67 v. 114.]

When judgment to operate as a conveyance.

SEC. 9. When the party against whom a judgment for a conveyance, release, or acquittance is rendered, does not comply therewith by the time appointed, such judgment shall have the same operation and effect, and be as available, as if the conveyance, release, or acquittance had been executed conformably to such judgment. [Civil Code, § 375, S. & C. 1051.]

Judgment against married woman.

SEC. 10. When a married woman sues or is sued alone, like proceedings shall be had, and judgment may be rendered and enforced, as if she were unmarried. Her separate property and estate shall be liable for the judgment against her; but she shall be entitled to the benefit of all exemption laws for heads of families. [Civil Code, § 28, 71 v. 47.]

CHAPTER 2.

JUDGMENT UPON FAILURE TO ANSWER.

SECTION 1. How damages assessed upon default.

How damages assessed on default.

SECTION 1. If a case is wholly or partly in default, and the taking an account, proof of a fact, or the assessment of damages, is necessary, the court may take the account, hear the proof, or assess the damages, or may refer the case to a referee or master for such purpose, or direct the matter to be ascertained by a jury; but if a party appear at the trial in person or by attorney, and demand and is entitled to a jury, the matter must be submitted thereto; and if the demand is made in a case where the default is partial, the court may order the whole case to be determined in one trial. [Civil Code, § 376, 69 v. 44, § 1; § 598, S. & C. 1130.]

CHAPTER 3.

JUDGMENT BY CONFESSION.

SECTION
1. By debtor personally in court.
2. Pleadings in such case.
3. How such judgment enforced.
4. Warrant of attorney to confess to be produced.
5. How warrant of a person in custody to be executed.

By debtor personally in court.

SECTION 1. A person indebted, or against whom a cause of action exists, may personally appear, in a court of competent jurisdiction, and, with the assent of the creditor, or person having such cause of action, confess judgment; whereupon judgment shall be entered accordingly. [Civil Code, § 377, S. & C. 1052.]

Pleadings in such case.

SEC. 2. The debt or cause of action shall be briefly stated in the judgment, or in a writing to be filed as pleadings in other actions. [Civil Code, § 378, S. & C. 1053.]

How such judgment enforced.

SEC. 3. Such judgment shall authorize the same proceedings for its enforcement as judgments rendered in actions regularly brought and prosecuted; and the confession shall operate as a release of errors. [Civil Code, § 379, S. & C. 1053.]

Warrant of attorney to confess to be produced.

SEC. 4. An attorney who confesses judgment in any case shall, at the time of making such confession, produce the warrant of attorney for making the same to the court before which he makes the confession; and the original or a copy of the warrant shall be filed with the clerk of such court. [Civil Code, § 380, S. & C. 1053.]

SEC. 5. A warrant of attorney executed by a person in custody, to confess judgment in favor of the person at whose suit he is in custody, shall be of no force unless executed in

presence of an attorney expressly named by the person in custody, and signed by him as a witness. [Civil Code, § 381, S. & C. 1053.] How warrant of a person in custody to be executed.

CHAPTER 4.

MANNER OF GIVING AND ENTERING JUDGMENT.

SECTION
1. Must be entered by clerk upon verdict.
2. When court to order what judgment to be entered on verdict.
3. When to be entered against the verdict.
4. When defendant may have judgment.
5. Rights of infants reserved.
6. Judgments must be entered on journal.
7. Records to be made unless waived.
8. When to be made up and signed.
9. What must go into the record.
10. Court to cause records to be completed.
11. When judicial records to be transcribed.
12. When complete records need not be made.
13. To be made upon payment of costs.
14. Index to judgments.

SECTION 1. When a trial by jury has been had, judgment must be entered by the clerk in conformity to the verdict, unless it is special, or the court order the case to be reserved for future argument or consideration. [Civil Code, § 382, S. & C. 1054.] Must be entered by clerk upon verdict.

SEC. 2. When the verdict is special, or when there is a special finding on particular questions of fact, or where the case is reserved, the court shall order what judgment shall be entered. [Civil Code, § 383, S. & C. 1054.] When court to order what judgment to be entered on verdict.

SEC. 3. Where, upon the statements in the pleadings, one party is entitled by law to judgment in his favor, judgment shall be so rendered by the court, although a verdict has been found against such party. [Civil Code, § 384, S. & C. 1054.] When to be entered against the verdict.

SEC. 4. If a counterclaim or set-off established at the trial exceeds the plaintiff's claim so established, judgment for the defendant must be given for the excess; or, if it appear that the defendant is entitled to any affirmative relief, judgment shall be given therefor. [Civil Code, § 385, S. & C. 1054.] When defendant may have judgment.

SEC. 5. It shall not be necessary to reserve in a judgment or order the right of an infant to show cause against it after his attaining full age; but in any case in which, but for this section, such reservation would have been proper, the infant, within one year after arriving at the age of twenty-one years, may show cause against such order or judgment. [Civil Code, § 386, S. & C. 1054.] Rights of infants reserved.

SEC. 6. All judgments and orders must be entered on the journal of the court, and specify clearly the relief granted or order made in the action. [Civil Code § 387, S. & C. 1055.] Judgments must be entered on journal.

Record to be made, unless waived.

SEC. 7. The clerk shall make a complete record of every cause as soon as it is finally determined, unless such record, or some part thereof, be duly waived. [Civil Code, § 388, S. & C. 1056.]

When to be made up and signed.

SEC. 8. He shall make up such record in each cause in the vacation next after the term at which the same was determined; and the presiding judge of the court shall, at the next term thereafter, subscribe the same. [Civil Code, § 389, S. & C. 1056.]

What must go into the record.

SEC. 9. The records shall be made up from the petition, the process, the return, pleadings subsequent thereto, reports, verdicts, orders, judgments, and all material acts and proceedings of the court; but if the items of an account, or the copies of papers attached to the pleadings, are voluminous, the court may order the record to be made by abbreviating the same, or inserting a pertinent description thereof, or by omitting them entirely. Evidence must not be recorded. [Civil Code, § 390, S. & C. 1056.]

Courts to cause records to be complete l.

SEC. 10. When the judicial acts or other proceedings of any court have not been regularly brought up and recorded by the clerk thereof, such court shall cause the same to be made up and recorded within such time as it may direct. When they are made up, and upon examination found to be correct, the presiding judge shall subscribe the same. [Civil Code, § 391, S. & C. 1057.]

When judicial records to be transcribed.

SEC. 11. A court, when it deems it necessary, may, by order on the journal, direct its clerk to transcribe any book in his office into a new volume, and the transcript so made shall be as valid as the original; and for such services the clerk shall receive six cents for each hundred words copied, to be paid out of the county treasury. [36 v. 15, § 2, S. & C. 1281.]

When complete records need not be made.

SEC. 12. Section seven of this chapter shall not apply—

1. In criminal prosecutions, where the indictment has been quashed, or where the prosecuting attorney has entered a nolle prosequi on the indictment.

2. When the action has been dismissed without prejudice to a future action, as provided in section five, chapter one, of this division.

3. In all actions in which, in open court, at the term at which the final order or judgment is made, both parties declare their agreement that no record shall be made. [Civil Code, § 392, S. & C. 1057.]

To be made upon payment of cost.

SEC. 13. When an action has been dismissed without prejudice to a future action, the clerk shall make a complete record of the proceedings, upon being paid therefor by the party requesting it. [Civil Code, § 393, S. & C. 1057.]

Index to judgments.

SEC. 14. The clerk shall keep an index, direct and reverse, of all judgments, by names of parties alphabetically arranged, showing in separate columns the name of the judgment debtor, the name of the judgment creditor, the amount of the judgment, and the year and term when it was rendered, the page of the journal on which it was entered, the volume

and page of the final record, the number of the suit, the number and the time of issue of the execution, and satisfaction thereof, when it appears to have been made. [34 v. 45, § 1; 36 v. 15, § 1, S. & C. 1280, 1281.]

CHAPTER 5.

JUDGMENT FOR COSTS, AND ITS ENFORCEMENT.

SECTION
1. When plaintiff must give security for costs.
2. When action may be dismissed for want of security for costs.
3. Security required if plaintiff become non-resident.
4. When additional security may be required.
5. When judgment may be entered against surety for costs.
6. When informers shall pay costs.
7. When defendant disclaims.
8. On preliminary motion, in the discretion of the court.
9. When defendant shall pay.
10. When plaintiff shall not recover costs.
11. When plaintiff to pay.
12. When in the discretion of the court.
13. When several actions are brought on the same instrument
14. Fees on summons to another county.

When plaintiff must give security for costs.

SECTION 1. When the plaintiff is a non-resident of the county in which the action is brought, or a partnership suing by its company name, he must furnish sufficient security for costs. The surety must be a resident of the county, and approved by the clerk. His obligation shall be complete by indorsing the summons, or signing his name on the petition, as surety for costs. He shall be bound for the payment of all costs which may be adjudged against the plaintiff in the court in which the action is brought, or in any other to which it may be carried, and for all costs which may be taxed against the plaintiff in such action, whether he obtain judgment or not; but the plaintiff may deposit with the clerk of the court such sum of money, as security for costs in the case, as, in the opinion of the clerk, will be sufficient for the purpose. The court may, on motion of the defendant, and if satisfied that such deposit is not sufficient, require the same to be increased, or personal security [to] be given. [Civil Code, § 543, S. & S. 570; 44 v. 66, § 3, S. & C. 1139.]

When action may be dismissed for want of security for costs.

SEC. 2. If security for costs be not given in a case mentioned in the last section, the court shall, at any time before the commencement of the trial, on motion of the defendant, and notice to the plaintiff, dismiss the action, unless in a reasonable time, which may be allowed by the court, security be given. [Civil Code, § 544, S. & C. 1116.]

Security required if plaintiff become non-resident.

SEC. 3. If the plaintiff become a non-resident of the county in which the suit is brought, during its pendency, he may be compelled, in the manner stated in the two preceding sections, to give such security. [Civil Code, § 545, S. & C. 1116.]

When additional security may be required.

SEC. 4. In an action in which security for costs has been given, the defendant may, at any time before commencement of the trial, after reasonable notice to the plaintiff, move the court for additional security; and if, on such motion, the court is satisfied that the surety has removed from this state, or is not sufficient, the action may be dismissed, unless, in a reasonable time, to be fixed by the court, sufficient security be given. [Civil Code, § 546, S. & C. 1116.]

When judgment may be entered against surety for costs.

SEC. 5. After final judgment in an action in which security for costs has been given, the court, on motion of the defendant, or a person having a right to such costs, or any part thereof, after ten days' notice of such motion, may render judgment, in the name of the defendant, or his legal representatives, against the surety for costs, his executors or administrators, for the amount of costs adjudged against the plaintiff, or so much thereof as is unpaid. Execution may be issued on such judgment as in other cases, for the use and benefit of the persons entitled to such costs. [Civil Code, § 547, S. & C. 1116.]

When informers shall pay costs.

SEC. 6. If an informer, under a penal statute, to whom is given the penalty, or any part thereof, if recovered, dismiss his suit or prosecution, or fail in the same, he shall pay all costs, unless he is an officer whose duty it is to commence the same. [Civil Code, § 548, S. & C. 1117.]

When defendant disclaims.

SEC. 7. When a defendant disclaims having title or interest in land, or other property, the subject of the action, he shall recover costs, unless, for special reasons, the court adjudge otherwise. [Civil Code, § 549, S. & C. 1117.]

On preliminary matters, in the discretion of the court.

SEC. 8. Unless otherwise provided by statute, the costs of motions, continuances, amendments, and the like, shall be taxed and paid as the court, in its discretion, may direct. [Civil Code, § 550, S. & C. 1117.]

When defendant shall pay.

SEC. 9. When it is not otherwise provided by statute, costs shall be allowed, of course, to the plaintiff, upon a judgment in his favor, in actions for the recovery of money only, or for the recovery of specific real or personal property. [Civil Code, § 551, S. & C. 1117.]

When plaintiff shall not recover costs.

SEC. 10. When the judgment is less than one hundred dollars, unless the recovery is reduced below that sum by counterclaim or set off, each party shall pay his own costs; and in all actions for libel, slander, malicious prosecution, assault, assault and battery, false imprisonment, criminal conversation, or seduction, actions for nuisance, or against a justice of the peace for misconduct in office, if the damage assessed is under five dollars, the plaintiff shall not recover costs. [Civil Code, § 552, S. & C. 1117.]

When plaintiff to pay.

SEC. 11. Costs shall be allowed, of course, to any defendant, upon a judgment in his favor in the actions mentioned in the last two sections. [Civil Code, § 553, S. & C. 1117.]

When in the discretion of the court.

SEC. 12. In other actions the court may award and tax costs, and apportion them between the parties, on the same

or adverse sides, as in its discretion, it may adjudge to be right and equitable. [Civil Code, § 554, S. & C. 1118.]

When several actions are brought on the same instrument.

SEC. 13. When several actions are brought on one instrument in writing, against several parties who might have been joined as defendants in the same action, no costs shall be recovered by the plaintiff in more than one of the actions, if the parties proceeded against in the other actions were, at the commencement of the previous action, openly within the state. [Civil Code, § 555, S. & C. 1118.]

Fees on summons to another county.

SEC. 14. When a summons is issued to another county, it may be returned by mail, and the sheriff shall be entitled to the same fees as if it had issued in the county of which he is sheriff. [Civil Code, § 556, S. & C. 1118.]

CHAPTER 6.

NEW TRIAL, AND OTHER RELIEF AFTER JUDGMENT.

SECTION
1. When court may vacate or modify judgment after the term.
2. When judgment on service by publication may be opened.
3. Bona fide purchaser unaffected.
4. Mode of proceeding in certain cases.
5. Mode of proceeding in other cases.
6. Grounds to vacate the first trial.
7. What must precede a vacation.
8. When enforcement of judgment may be suspended.
9. Suspension of execution when judgment prematurely rendered.
10. Limitations.
11. When the full sum is not sued for and recovered.
12. This chapter applies to supreme and probate courts.

When court may vacate or modify judgment after the term.

SECTION 1. A court of common pleas, or a superior or district court, may vacate or modify its own judgment or order, after the term at which the same was made—

1. By granting a new trial for the cause, within the time and in the manner provided in section five, chapter five, division three, of this title.

2. By a new trial granted in proceedings against defendants, constructively summoned, as provided in section fourteen, chapter six, division two, of this title.

3. For mistake, neglect, or omission of the clerk, or irregularity in obtaining a judgment or order.

4. For fraud practiced by the successful party in obtaining a judgment or order.

5. For erroneous proceedings against an infant, married woman, or person of unsound mind, where the condition of such defendant does not appear in the record, nor the error in the proceedings.

6. For the death of one of the parties before the judgment in the action.

7. For unavoidable casualty or misfortune, preventing the party from prosecuting or defending.

8. For errors in a judgment, shown by an infant in

twelve months after arriving at full age, as prescribed in section five, chapter four, division four, of this title.

9. For taking judgments upon warrants of attorney for more than was due the plaintiff, when the defendant was not summoned, or otherwise legally notified of the time and place of taking such judgment.

10. When such judgment or order was obtained, in whole, or in a material part, by false testimony on the part of the successful party, or any witness in his behalf, which ordinary prudence could not have anticipated or guarded against, and the guilty party has been convicted. [Civil Code, § 534, 74 v. 115.]

When judgment on service by publication may be opened.

SEC. 2. A party against whom a judgment or order has been rendered without other service than by publication in a newspaper, may, at any time within five years after the date of the judgment or order, have the same opened, and be let in to defend; but before the judgment or order can be opened, the applicant shall give notice to the adverse party of his intention to make the application, and shall file a full answer to the petition, pay all costs, if the court requi e them to be paid, and make it appear, to the satisfaction of the court, that during the pendency of the action he had no actual notice thereof in time to appear in court and make his defense; and each party may present affidavits. [Civil Code, § 75, S. & C. 965; 56 v. 93, § 3, S. & C 1172]

Bona fide purchaser unaffected.

SEC. 3. The title to any property which is the subject of the judgment or order sought to be opened, and which, by or in consequence of the judgment or order, has passed to a purchaser in good faith, shall not be affected by any proceedings under the two preceding sections; nor shall the title to any property sold before judgment under an attachment be affected by said sections. [Civil Code, § 75, S. & C. 965.]

Mode of proceeding in certain cases.

SEC. 4. The proceedings to correct mistakes or omissions of the clerk, or irregularity in obtaining a judgment or order, shall be by motion, upon reasonable notice to the adverse party, or his attorney in the action. The motion to vacate a judgment because of its rendition before the action regularly stood for trial, can be made only in the first three days of the succeeding term. [Civil Code, § 535, S. & C. 1114.]

Mode of proceeding in other cases.

SEC. 5. The proceedings to vacate the judgment or order on the grounds mentioned in subdivisions four, five, six, seven, eight, nine, and ten, of section one, of this chapter, shall be by petition, verified by affidavit, setting forth the judgment or order, the grounds to vacate or modify it, and, if the party applying was defendant, the defense to the action. On such petition a summons shall issue and be served as in the commencement of an action. [Civil Code, § 536, 74 v. 115]

SEC. 6. The court must first try and decide upon the grounds to vacate or modify a judgment or order, before

trying or deciding upon the validity of the defense or cause of action. [Civil Code, § 537, S. & C. 1115.]

Grounds to vacate to be first tried.

SEC. 7. A judgment shall not be vacated on motion or petition until it is adjudged that there is a valid defense to the action in which the judgment was rendered; or, if the plaintiff seeks its vacation, that there is a valid cause of action; and where a judgment is modified, all liens and securities obtained under it shall be preserved to the modified judgment. [Civil Code, § 538, S. & C. 1115.]

What must precede a vacation.

When enforcement of judgment may be suspended.

SEC. 8. The party seeking to vacate or modify a judgment or order may obtain an injunction suspending proceedings on the whole or part thereof, which injunction may be granted by the court, or any judge thereof, when it is rendered probable, by affidavit, or by exhibition of the record, that the party is entitled to have such judgment or order vacated or modified. [Civil Code, § 539, S. & C. 1115.]

Suspension of execution when judgment prematurely rendered.

SEC. 9. When the judgment was rendered before the action stood for trial, the suspension may be granted as provided in the last section, although no valid defense to the action be shown; and the court shall make such orders concerning the executions to be issued on the judgment as shall give to the defendants the same rights of delay he would have had if the judgment had been rendered at the proper time. [Civil Code, § 540, S. & C. 1115.]

Limitations.

SEC. 10. Proceedings to vacate or modify a judgment or order, for the causes mentioned in subdivisions four, five, and seven, of section one, of this chapter, must be commenced within two years after the judgment was rendered, or order made, unless the party entitled thereto is an infant, married woman, or person of unsound mind, and, in cases of such disability, within two years after the removal thereof. Proceedings for the causes mentioned in subdivisions three and six of the same section shall be commenced within three years, and in subdivision nine within two years after the defendant has notice of the judgment, and under subdivision ten the proceedings may be commenced after the guilty party is convicted, if the conviction is within two years from the rendition of the judgment. [Civil Code § 541, 74 v. 115.]

When the full sum is not sued for and recovered.

SEC. 11. When, by mistake of the pleader, the amount claimed in the pleading, and recovered, is less than the true amount then due, the party injured by the mistake may recover the balance by civil action, without costs. [66 v. 144, § 1.]

This chapter applies to supreme and probate courts.

SEC. 12. The provisions of this chapter shall apply to the supreme court and probate court, so far as the same may be applicable to their judgments or final orders; and in estimating time the probate court shall, for this purpose, be considered as holding, in each year, three terms, of four months each, the first commencing on the first of January of each year. [Civil Code, § 542, S. & C. 1115.]

CHAPTER 7.

REVIVOR OF, AND NEW PARTIES TO JUDGMENT.

SECTION
1. How parties not summoned, or unknown, proceeded against.
2. How dormant judgment may be revived.
3. When surety may revive judgment in his own name.
4. Limitation.
5. How revived when a party dies after judgment.
6. Partners may be made parties to judgment against partnership.
7. Sureties in certain bonds may be made parties to judgment thereon.

How parties not summoned, or unknown, proceeded against.

SECTION 1. If judgment be rendered in this state on a joint contract or instrument, parties to the action who were not summoned, and persons whose liability was not known to the plaintiff at the rendition of the judgment, may be made parties thereto by action in the same court, if they can be summoned in the state; or, if the judgment be rendered elsewhere, the plaintiff may bring suit upon such contract or instrument against the parties not summoned, or persons whose liability was unknown, in any county where any such parties reside or may be summoned. [Civil Code, § 415, S. & C. 1060; 48 v. 31, § 1, S. & C. 1149.]

How dormant judgment may be revived.

SEC. 2. If a judgment, including judgments rendered by a justice of the peace or mayor, a transcript of which has been filed in the court of common pleas for execution, become dormant, it may be revived in the same manner as prescribed for reviving actions before judgment, or by action; and when either party to such dormant judgment, his agent or attorney, makes affidavit showing that the adverse party is a non-resident of the state, and that such judgment remains unsatisfied, in whole or in part, and the amount owing thereon, service may be made by publication as in other cases; and if sufficient cause be not shown to the contrary, the judgment shall stand revived for the amount which the court finds to be due and unsatisfied thereon. The lien of the judgment for the amount due shall be revived and shall operate from the time of the entry of the conditional order, or the filing of the petition. [Civil Code, § 417, S. & S. 562; § 490, S. & C. 1093; 62 v. 40, § 2, S. & S. 422.]

When surety may revive judgment in his own name.

SEC. 3. When the surety in a judgment, who is certified therein to be such, or his personal representative, pays the judgment, or any part thereof, he shall, to the extent of such payment, have all the rights and remedies against the principal debtor that the plaintiff had at the time of such payment; and proceedings to revive the judgment shall be as provided in the last section, and shall be in the name of such surety or representative; but the plaintiff in the original action shall not be liable for any costs therein. [68 v. 17, § 1.]

SEC. 4. No action shall be brought to revive a judgment

after twenty-one years after it becomes dormant, unless the party entitled to bring such action was, at the time the judgment became dormant, within the age of twenty-one years, insane, or imprisoned, when the action may be brought within fifteen years after the disability has ceased. [73 v. 148, § 1.] Limitation.

SEC. 5. If either or both of the parties die after judgment, and before satisfaction thereof, their representatives, real or personal, or both, as the case may require, may be made parties to the judgment, in the same manner as is prescribed for the revival of actions before judgment; and such judgment may be rendered, and execution awarded, as might or ought to be given or awarded against the representatives, real or personal, or both, of such deceased party. [Civil Code, § 416, S. & C. 1060] How revived when a party dies after judgment.

SEC. 6. The members of a partnership, against which a judgment has been rendered by its firm name, may be made parties to the judgment by action. [44 v. 66, § 4, S. & C. 1138.] Partners may be made parties to judgment against partnership.

SEC. 7. Sureties to the bond of an executor, administrator, guardian, or trustee, may by [be] made parties to a judgment thereon against the principal, by action. [51 v. 397, § 2, S. & C. 1139.] Sureties in certain bonds may be made parties to judgment thereon.

DIVISION V. ENFORCEMENT OF JUDGMENT.

CHAPTER 1. EXECUTION.
CHAPTER 2. PROCEEDINGS IN AID OF EXECUTION.

CHAPTER 1.

EXECUTION.

SUBDIVISION I. *Kinds of execution.*
SUBDIVISION II. *Execution against property.*
SUBDIVISION III. *Exemption from execution.*
SUBDIVISION IV. *When chattels claimed by third person.*
SUBDIVISION V. *Execution against the person.*
SUBDIVISION VI. *Privilege from arrest.—Prison bounds.*

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SECTION 2. Kinds of execution.

SUBDIVISION II.

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3. Property subject to levy and sale.
4. When lien of judgment attaches to lands or goods.
5. Lien of judgment of supreme court.
6. Transcripts of judgments of justices and mayors may be filed in court.
7. The lien of such judgment.
8. Executions upon such judgments, and sales thereunder.
9. When judgment becomes dormant and ceases to be a lien.
10. The command and indorsement of the writ of execution.
11. In what cases no preference given to executions.
12. Goods and chattels to be first taken; for want thereof lands to be levied on.
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80 Entitled to prison bounds, but execution may issue against property.
81. Death of debtor no satisfaction of judgment
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83. When debtor may be discharged.

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SUBDIVISION I. KINDS OF EXECUTION.

Execution, how issued and directed.

SECTION 1. An execution is a process of the court, issued by the clerk, and directed to the sheriff of the county. Executions may be issued to the sheriffs of different counties at the same time. [Civil Code, § 418, S. & C. 1062.]

Kinds of execution.

SEC. 2. Executions are of three kinds:

1. Against the property of the judgment debtor, including orders of sale.

2. Against the person of the judgment debtor.

3. For the delivery of the possession of re
which case the writ shall contain a specific des
property, and a command to the sheriff to del
erty to the person entitled thereto; and the
require him to make the damages recovered fo
the possession, and costs, or costs alone, out o
of the person who so withholds the possession.
§ 419, S. & C. 1062; § 487, S. & C. 1093]

SUBDIVISION II. EXECUTION AGAINST PR

Property subject to levy and sale.

SEC. 3. Lands and tenements, including v
therein, and permanent leasehold estates rene
and goods and chattels, not exempt by law, sh
to the payment of debts, and shall be liable t
execution and sold as hereinafter provided
§ 420, S. & C. 1063; 37 v. 44, § 1, S. & C. 1142.

When lien of judgment attaches to lands or goods.

SEC. 4. Such lands and tenements, withi
where the judgment is entered, shall be boun
faction thereof from the first day of the term
ment is rendered; but judgments by confess
ments rendered at the same term at which
commenced, shall bind such lands only fro
which such judgments are rendered. All o
well as goods and chattels of the debtor, shall
the time they are seized in execution. [Civ
S. & C. 1064; 37 v. 44, § 1, S & C. 1142.]

Lien of judgment of supreme court.

SEC. 5. A judgment of the supreme cou
binds the lands and tenements of the debt
county in which the suit originated, from th
the term at which the judgment is entered,
lands, and the goods and chattels, of the de
time they are seized in execution; but the li
ment of the court of common pleas, in an ac
appealed by the judgment debtor to the dist
is thence removed into the supreme court,
thereby divested or vacated, but shall continu
determination of the action in the supreme
298, § 2, S. & C. 3-5.]

Transcripts of judgments of justices and mayors, may be filed in court.

SEC. 6. The party in whose favor a judgme
by a justice of the peace, or mayor of a mun
tion, may, at any time after the day of render
ment, if the same be not appealed or stay
office of the clerk of the court of common plea
in which the judgment was rendered, a trans
judgment, having certified therein the amoun
thereon; and thereupon the clerk shall ente
the execution docket, together with the amou
ment, and the time of filing the transcript;
ever, that if, within ten days after the ren
judgment by said justice of the peace or ma
ment debtor shall pay the same, or give bail f

cution, that fact shall forthwith be certified up to said clerk of the court of common pleas, by the justice or mayor rendering such judgment, and a memorandum of such fact shall, by such clerk, be entered upon the execution docket. The cost of the transcript, filing the same, and of the entry on the docket, shall be paid by the party filing the transcript, and not taxed to the other party. [Civil Code, § 489, S. & C. 567; § 492, S & C. 1094.]

The lien of such judgment.

SEC. 7. Such judgment, if the transcript be filed in term time, shall be a lien on real estate of the judgment debtor within the county, from the day of filing; if filed in vacation, it shall, as against the debtor, be a lien from the day of filing, but as against other transcripts filed in vacation, and judgments rendered at the next term of the court, it shall be a lien only from the first day of the next term. [Civil Code. § 490, S. & C. 1093.]

Executions upon such judgments, and sales thereunder.

SEC. 8. Execution may be issued on such judgment at any time after filing the transcript, as if the judgment had been rendered in court; but the lien shall remain as provided in the preceding section. [Civil Code, § 491, S. & C. 1094.]

When judgment becomes dormant and ceases to be a lien.

SEC. 9. If execution on a judgment rendered in any court of record in this state, or a transcript of which has been filed as provided in section six of this chapter, be not sued out within five years from the date of the judgment, or if five years intervene between the date of the last execution issued on such judgment and the time of suing out another execution thereon, such judgment shall become dormant, and shall cease to operate as a lien on the estate of the judgment debtor. [Civil Code, § 422 S. & C. 1067.]

Command and indorsement of writ.

SEC. 10. The writ of execution against the property of the judgment debtor, issuing from any court of record, shall command the officer to whom it is directed, that of the goods and chattels of the debtor he cause to be made the money specified in the writ, and, for want of goods and chattels, that he cause the same to be made of the lands and tenements of the debtor; and the exact amount of the debt, damages, and costs for which the judgment is entered, shall be indorsed on the execution. [Civil Code, § 423, S. & C. 1068.]

In what cases no preference given to executions.

SEC. 11. When two or more writs of execution against the same debtor are sued out during the term in which judgment was rendered, or within ten days thereafter, and when two or more writs of execution against the same debtor are delivered to the officer on the same day, no preference shall be given to either of such writs; but if a sufficient sum of money be not made to satisfy all executions, the amount made shall be distributed to the several creditors in proportion to the amount of their respective demands; and in all other cases the writ of execution first delivered to the officer shall be first satisfied. The officer shall indorse on every writ of execution the time when he received the same.

But nothing herein contained shall be so construed as to affect any preferable lien, which a judgment, on which execution issued, has on the lands of the judgment debtor. [Civil Code § 424 S & C. 1069]

Goods and chattels to be first taken; for want thereof lands to be levied on.

SEC. 12 The officer to whom a writ of execution is delivered shall proceed, immediately, to levy the same upon the goods and chattels of the debtor; but if no goods and chattels can be found, the officer shall indorse on the execution the words "no goods," and forthwith levy the same upon the lands and tenements of the debtor which are liable to satisfy the judgment [Civil Code, § 425, S. & C. 1069]

When officer may take bond for their delivery.

SEC. 13 When a sheriff, coroner or other officer, levies, by virtue of an execution, upon any goods and chattels which afterwards remain upon his hands unsold for want of bidders, for the want of time to advertise and sell, or for any other reasonable cause, the officer may, for his own security, take of the defendant an undertaking, with security, in such sum as he deems sufficient, to the effect that the property shall be delivered to the officer holding an execution for the sale of the same, at the time and place appointed by such officer, either by notice given in writing to the defendant in execution, or by advertisement published in a newspaper printed in the county, naming therein the day and

Condition of such bond.

What is a breach of its condition.

place of sale; and if the defendant fail to deliver the goods and chattels at the time and place mentioned in the notice to him given, or to pay to the officer holding the execution the full value of such goods and chattels, or the amount of the debt and costs, the undertaking given as aforesaid, shall be considered as broken, and may be proceeded on as in other cases. [Civil Code, § 429, S. & C. 1071.]

Notice of sale of goods on execution.

SEC. 14. The officer who levies upon goods and chattels by virtue of an execution issued by a court of record, shall, before he proceeds to sell the same, cause public notice to be given of the time and place of sale, for at least ten days before the day of sale. The notice shall be given by advertisement published in some newspaper printed in the county, or, in case no newspaper is printed therein, by setting up advertisements in five public places in the county, two of which advertisements shall be put up in the township where the sale is to be held. [Civil Code, § 430 66 v. 23.]

Alias execution against unsold goods.

SEC. 15. When goods and chattels levied upon by execution can not be sold for want of bidders, or want of time, the officer making the return shall annex to the execution a true and perfect inventory of the goods and chattels remaining unsold; and the plaintiff in such execution may thereupon have another execution issued, directing the sale of the property levied upon; but such goods and chattels shall not be sold unless the time and place of sale be advertised as directed in the last section. [Civil Code, § 430, 66 v. 23]

SEC. 16. All sales of goods and chattels shall be at public auction; but the court from which an execution or order of

sale issues, or a judge thereof in vacation, may, on good cause shown, on application of either party, and due notice to the adverse party, make an order directing the sheriff, or other officer holding the process, to sell such goods and chattels at private sale for cash, specifying the time, not extending beyond the return day of the process, during which such sale will continue; but before such private sale is made, the court shall order such personal property to be appraised by three disinterested persons; and the property shall not be so sold for less than two thirds the appraised value thereof. [Civil Code, § 430, 66 v. 23]

Public and private sale of goods on execution.

SEC. 17. When a writ is issued directing the sale of property previously taken in execution, the officer issuing such writ shall, if requested by the person entitled to the benefit thereof, or his agent or attorney, add thereto a command to the officer to whom such writ is directed, that, if in his opinion, the property remaining in his hands not sold is insufficient to satisfy the judgment, he shall levy the same upon lands and tenements, goods and chattels, or either, of the judgment debtor, as the law permits, sufficient to satisfy the debt. [Civil Code, § 431, S. & C. 1072.]

Such further writ may direct another levy, if the first be insufficient.

SEC. 18. If execution be levied upon lands and tenements, the officer levying such execution shall call an inquest of three disinterested freeholders, who shall be residents of the county where the lands taken in execution are situated, and administer to them an oath impartially to appraise the property so levied upon, upon actual view; and such freeholders shall forthwith return to such officer, under their hands, an estimate of the real value of the property in money. [Civil Code, § 432, S. & C. 1073.]

Lands to be appraised before sale, by three freeholders.

SEC. 19. The officer receiving such return shall forthwith deposit a copy thereof with the clerk of the court from which the writ issued, and immediately advertise and sell such real estate, agreeably to the provisions of this chapter. [Civil Code, § 433, S. & C. 1073.]

Copy of appraisement to be deposited with clerk.

SEC. 20. If, upon such return, it appear by the inquisition that two thirds of the appraised value of the lands and tenements so levied upon is sufficient to satisfy the execution, with costs, the judgment on which the execution issued shall not operate as a lien on the residue of the debtor's estate, to the prejudice of any other judgment creditor. But no tract of land shall be sold for less than two-thirds of the value returned in the inquest. Nothing in this section contained shall affect the sale of lands by the state; but all lands, the property of individuals indebted to the state for any debt or taxes, or in any other manner, except for loans heretofore authorized by the legislature, shall be sold without valuation, for the discharge of such debt or taxes, agreeably to the laws for such case made and provided. [Civil Code, § 434, S & C. 1073.]

Lien of judgment restricted to two-thirds of appraised value of lands levied on.

Lands not to be sold for less than two-thirds of appraisement except for debts, etc., due state, unless, etc.

SEC. 21. If the property of a clerk, sheriff, coroner justice of the peace, or constable, or of a collector of state, county,

Property of certain officers to be sold without valuation.

municipal corporation, or township tax, be levied on, for or on account of any money by him collected or received in his official capacity, the property so levied on shall be sold without valuation. [Civil Code, § 435, S. & C. 1071]

The notice of the sale of lands.

SEC. 22 Lands and tenements taken in execution shall not be sold until the officer cause to be given public notice of the time and place of sale, for at least thirty days before the day of sale, by advertisement in some newspaper printed and of general circulation in the county, or, in case no newspaper is printed in the county, in some newspaper of general circulation therein, and by putting up an advertisement of the same upon the court-house door, and in five other public places in the county, two of which shall be in the township where the lands and tenements lie. When the advertisement is made in a newspaper published weekly, it shall be sufficient to insert it in five consecutive numbers thereof; but if there is published both a daily and weekly edition of the newspaper selected for such advertisement, and the circulation of the daily in the county exceeds that of the weekly, or in case the lands and tenements taken in execution are located in any city of the first or second class in this state, and there shall be published both a daily and weekly edition of the newspaper selected for such advertisement, and the circulation of the daily in such city of the first or second class in which the lands or tenements are situate shall exceed that of the weekly, it shall be sufficient to publish the advertisement in the daily once a week, for five consecutive weeks, before the day of sale, each insertion to be on the same day of the week; but the expense of such publication in a daily newspaper shall not exceed the cost of publishing the same in a weekly newspaper. All sales made without such advertisement shall be set aside, on motion, by the court to which the execution is returnable. Civil Code, § 436, S & C. 1074]

Publication of notice in German newspaper.

SEC. 23. In counties containing a newspaper or newspapers printed in the German language, and of general circulation therein, the court, when the appraised value of the property exceeds five hundred dollars, if satisfied that it will be for the benefit of the parties interested, shall upon motion of a party to the suit interested in the property to be sold, in addition to the notice required by the last section, order to be printed in one of such German newspapers, for the same period of time, such notice of sale of lands and tenements taken in execution or to be sold by order of the court. [48 v. 27, S. & C. 1148; 55 v 37, § 1, S. & C. 1153; 73 v. 100]

The return of the writ, and record thereof.

SEC. 24. The sheriff shall indorse on the writ his proceedings thereon, and the clerk shall immediately, upon the return thereof, record at length, in the execution docket, or other docket provided for that purpose, all such indorse-

ments; and the record shall be held to be a part of the record of the court. [46 v. 95, § 1, S. & C. 1148; 49 v. 25, § 1, S. & C. 1149.]

Duty of sheriff when money made without sale of real estate.

SEC. 25. If the sheriff collect any part of a judgment by virtue of an execution without the sale of real estate, he shall pay the same to the judgment creditor, or his attorney, upon demand made therefor at his office; and if the execution be fully satisfied, he shall return it within three days after he has collected the money thereon. [54 v. 104, § 1, S. & C. 1153.]

Confirmation of sale; order for deed.

Officer may retain purchase money till sale confirmed.

SEC. 26. If, upon the return of any writ of execution, for the satisfaction of which lands and tenements have been sold, it is found by the court, on careful examination of the proceedings of the officer, that the sale has, in all respects, been made in conformity to the provisions of this title, the clerk shall be directed to make an entry on the journal, that the court is satisfied of the legality of such sale, and that the officer make to the purchaser a deed for the lands and tenements; and the officer, on making the sale, may retain the purchase money in his hands until the court examines his proceedings, when he shall pay the same to the person entitled thereto, agreeably to the order of the court. [Civil Code, § 437, S. & C. 1074.]

When conveyance may be made by commissioner.

SEC. 27. Real property may be conveyed by a master commissioner—

1. When, by an order or judgment in an action or proceeding, a party is ordered to convey such property to another, and he neglects or refuses to comply with the order or judgment, and the master is directed to convey on failure of the party to comply with the order.

2. When specific real property has been sold by a master under an order or judgment of the court. [Civil Code, § 395, S. & C. 1057.]

When sheriff may act as and for master commissioner.

SEC. 28. A master commissioner or special master who sells real property shall have the same power to administer oaths that is conferred upon the sheriff; a sheriff may act as a master commissioner, and shall, also, on notice, and for a reasonable compensation to be paid by the master commissioner out of his fees, attend and make sale for any such commissioner who, by reason of sickness, is unable to attend; and sales made by a master shall conform, in all respects, to the laws regulating sales of lands upon execution. [Civil Code, § 396, S. & C. 1057; 43 v. 87, § 1, S. & C. 1148; 72 v. 68, § 1.]

Deed of sheriff, master, etc.—recitals.

SEC. 29. An officer, including a master commissioner and a special master, who sells real property, shall, on confirmation of the sale, make to the purchaser a deed, which shall contain the names of the parties to the judgment, the date and amount of the judgment, the substance of the execution or order on which the property was sold, the substance of the officer's return thereon, and the order of confirmation;

and the deed shall be executed, acknowledged, and recorded as is provided with respect to other deeds. [Civil Code, §§ 397, 438, S. & C. 1057, 1075.]

Effect of deed of sheriff, master, etc.

SEC. 30. The deed shall be prima facie evidence of the legality and regularity of the sale; and all the estate and interest of the person whose property the officer so professed to sell and convey, whether that interest existed at the time the property became liable to satisfy the judgment, or was acquired subsequently, shall be thereby vested in the purchaser. [Civil Code, § 438, S. & C. 1075.]

Printer's fee may be required in advance.

SEC. 31. The officer who makes a levy, or holds an order of sale, may, before giving notice of the sale, demand of the plaintiff, his agent or attorney, the fees of the printer for publishing such notice; and in such case the officer shall not be required to make such publication until the fees are paid. [Civil Code, §§ 439, 440, S. & C. 1078.]

Where sales to take place.

SEC. 32. All sales of lands or tenements under execution or order of sale shall be held in the county in which such lands and tenements are situated, and at the court house, unless otherwise ordered by the court. Purchases of real or personal property, by the officer making sale thereof, or by an appraiser of such property, shall be considered fraudulent and void; but this section shall not affect, unless for fraud, sales by executors, administrators, or guardians, prior to March 29, 1841. [Civil Code, § 441, S. & C. 1079; 39 v. 42, §§ 1, 2, S. & C. 1147.]

Alias execution against lands.

SEC. 33. If lands and tenements levied on, or ordered to be sold, are not sold upon one execution, other executions may be issued to sell the same. [Civil Code, § 442, S. & C. 1079.]

Proceedings when creditors direct separate levies to be made on separate parcels of land.

SEC. 34. When two or more executions come to the hands of an officer, and it is necessary to levy on real estate to satisfy the same, and either of the judgment creditors, or his assignee, requires the officer to make a separate levy to satisfy his execution or executions, the officer shall obey the direction; but the officer making the levy on behalf of the creditor whose execution may, by the provisions of this chapter, be entitled to a preference, shall have the choice of such part of the real property of the judgment debtor or debtors as will be sufficient, at two-thirds of the appraised value, to satisfy the same. And when two or more executions which are entitled to no preference as to each other are put in the hands of the same officer, he shall, when required, levy the same on separate parcels of the real property of the judgment debtor or debtors, if, in the opinion of the appraisers, the same may be divided without material injury; and if the real property of such debtor or debtors be not sufficient, at two-thirds of its appraised value, to satisfy all the executions chargeable thereon, such part of the same shall be levied on to satisfy each execution, as will bear the same proportion in value to the whole, as the amount due on the execution bears to the amount of all the executions

chargeable thereon, as near as may be, according to the appraised value of each separate parcel. [Civil Code, § 443, S. & C. 1079.]

Successor of sheriff may make deeds for land sold by predecessor.

SEC. 35. If the term of service of the officer who makes sale of any lands and tenements expires, or if he die, be absent, or unable from any cause to make a deed of conveyance of the property sold, any successor of such officer, on receiving a certificate from the court from which execution issued for the sale of the lands and tenements, signed by the clerk, by order of the court, setting forth that sufficient proof has been made that the sale was fairly and legally made, and, on tender of the purchase money, or if the same, or any part thereof, has been paid, then, on proof of such payment, and tender of the balance, if any, may execute to the purchaser, or his legal representative, a deed of conveyance of the lands and tenements sold. Such deed shall be as good and valid in law, and have the same effect, as if the officer who made the sale had executed the same. [Civil Code, § 444, S. & C. 1079.]

After satisfaction of execution, balance to be paid to defendant.

SEC. 36. If, on any sale made as aforesaid, there be in the hands of the officer more money than is sufficient to satisfy the writ or writs of execution, with interest and costs, the officer shall, on demand, pay the balance to the defendant in execution, or his legal representatives. [Civil Code, § 445, S. & C. 1079.]

Reversal of judgment not to effect title.

SEC. 37. If a judgment in satisfaction of which lands or tenements are sold, be thereafter reversed, such reversal shall not defeat or affect the title of the purchaser; but in such case restitution shall be made by the judgment creditor, of the money for which such lands or tenements were sold, with lawful interest from the day of sale. [Civil Code, § 446, S. & C. 1080.]

Remedy of purchaser at sale on execution, if sale invalid.

SEC. 38. If, upon the sale of property on execution, the title of the purchaser be invalid by reason of a defect in the proceedings, the purchaser may be subrogated to the right of the creditor against the debtor, to the extent of the money paid and applied to the debtor's benefit, and, to the same extent, shall have a lien on the property sold, as against all persons, except bona fide purchasers, without notice; but this section shall not be construed to require the creditor to refund the purchase money, by reason of the invalidity of any such sales. [44 v. 114, § 1, S. & C. 1149.]

Remedy in other cases of invalid sales.

SEC. 39 The last section shall apply, also, to all sales by order of court, sales by executors, administrators, guardians, and assignees, and to all sales for taxes. [44 v. 114, § 2, S & C. 1149.]

Proceedings to vacate satisfaction of judgment.

SEC. 40. When a plaintiff in execution, or his agent, has, in good faith, ordered a levy of execution upon property not subject thereto, and the same has been sold and applied on his judgment, and a recovery therefor has been had against him by the owner of the property, the person so recovered against, and having paid the amount so recovered, may, on

motion in the court having control of the
giving the judgment defendant notice of suc
the satisfaction, so made from the sale of t
execution, vacated, and shall be entitled to c
ment. [48 v. 97, § 1, S. & C. 1150]

Relief of officer who levies upon and sells wrong property in good faith.

SEC. 41. When an officer to whom an exe
issued upon a judgment levies the execution
upon property not subject thereto, and sells
applies the proceeds in satisfaction, or part
the judgment, and a recovery is had agai
value, the officer, upon payment of such
motion before the court having control of the
a showing to the court that due notice of su
been given to the defendant named in the
have the satisfaction of such judgment, so
sale of such property, vacated, and execut
therefor, for the use of such officer, the same
and sale had not been made. [48 v. 97, § 2,

Remedy when one of co-sureties, etc., pays for such property.

SEC 42. When a defendant in a judgmen
co-surety of such defendant, has, by mistal
execution issued on the judgment to be levi
not liable to such execution, and thereby cau
ment to be wholly or in part satisfied, and
pelled to pay the owner of such property th
be adjudged to have the same rights against
ant in such judgment, and against any co su
pal in respect of the debts on which suc
founded, as though such satisfaction had, by
law, been made out of the property of such de
or co-surety, so directing such levy. [48 v. 9
1151.]

When judgment loses preference.

SEC. 43. No judgment, on which executio
and levied before the expiration of one year
rendition, shall operate as a lien on the esta
to the prejudice of any other bona fide judg
But in all cases where judgment is rendered
or supreme court, and a special mandate is
court of common pleas to carry the same into
lien of the judgment creditor shall continu
after the first day of the term of the court of
to which such mandate is directed; or, if t
entered on the journal in vacation, after it
But in computing said period of one year, th
by an appeal of the case, or by an injuncti
execution, or by proceedings in error, or by a
office of sheriff and coroner, or by the inabili
cers, shall be excluded. [Civil Code, § 447, S

New appraisement for sale on execution.

SEC. 44. When real estate, taken on exec
praised, and twice advertised and offered fo
unsold for want of bidders, the court from wh
tion issued shall, on motion of the plaintiff,
appraisement, and order a new one to be ma

such levy and appraisement, and award a new execution to issue, as the case may require; and when such real estate, or any part thereof, has been three times appraised as aforesaid, and thereafter twice advertised and offered for sale, and then remains unsold for want of bidders, the court may direct the amount for which the same shall be sold. [Civil Code, § 447, S. & S. 563.]

New appraisement and terms of sale of mortgaged premises.

SEC. 45. When premises are ordered to be sold, and having been twice advertised and offered for sale, remain unsold for want of bidders, the court from which the order of sale issued shall, on motion of the plaintiff or defendant, order a new appraisement, and may also order that the land be sold on time, as follows: One-third cash in hand, one-third in nine months from the day of sale, and the remaining third in eighteen months from the day of sale, and deferred payments to draw six per cent. interest, and to be secured by mortgage on the premises. [Civil Code, § 374, 67 v. 114.]

When executions to be returned.

SEC. 46. The officer to whom a writ of execution is directed shall return such writ to the court to which it is returnable within sixty days from the date thereof. [Civil Code, § 448, S. & C. 1083.]

How judgment against principal and surety entered.

SEC. 47. When judgment is rendered in a court of record within this state, upon an instrument of writing in which two or more persons are jointly or severally bound, and it is made to appear to the court, by parol or other testimony, that one or more of the persons so bound signed the same as surety or bail for his or their co-defendant, the clerk of such court, in recording the judgment thereon, shall certify which of the defendants is principal debtor, and which surety or bail. And the clerk shall issue execution on such judgment, commanding the officer to cause the money to be made of the goods and chattels, lands and tenements, of the principal debtor, or, for want of sufficient property of the principal debtor to make the same, that he cause the same to be made of the goods and chattels, lands and tenements, of the surety or bail. The property, both personal and real, of the principal debtor, within the jurisdiction of the court, shall be exhausted before any of the property of the surety or bail shall be taken in execution. [Civil Code, § 449, S. & C. 1083.]

Execution in such case.

Appraisers' fees.

SEC. 48. Each appraiser of real estate under the provisions of this chapter shall receive fifty cents per day for his services, to be collected on the execution by virtue of which the property appraised was levied on. And when any freeholder, summoned as an appraiser, fails to appear at the time and place appointed by the officer, and discharge his duty as appraiser, he shall, on complaint made to a justice of the peace of the township in which he resides, forfeit and pay the sum of fifty cents for every such neglect, unless he render a reasonable excuse. Such sum shall be collected by the justice, and paid into the township treasury, for the use of the township. [Civil Code, § 450, S. & C. 1084.]

Penalty for neglecting to serve as appraiser.

Execution issued to another county may be returned by mail.

SEC. 49. When execution is issued in any county, and directed to the sheriff or coroner of another county, the sheriff or coroner having the execution may, after having discharged all the duties required of him by law, transmit such execution, by mail, to the clerk of the court who issued it. On proof made by such sheriff or coroner that the execution was mailed soon enough to have reached the office where it was issued within the time prescribed by law, he shall not be liable for any amercement or penalty if it does not reach the office in due time. [Civil Code, § 454, S. & C. 1086.]

Money not to be forwarded by mail.

SEC. 50. No sheriff or coroner shall forward by mail any money made on such execution, unless he be specially instructed to do so by the plaintiff, his agent, or attorney of record. [Civil Code, § 455, S. & S. 565.]

Execution docket.

SEC. 51. The clerk of the court of common pleas shall enter upon the execution docket the names, in full, of the parties to the cause in which an execution is issued, the number of the cause upon the appearance docket, the number of the execution, the date of its issue, the amount of the judgment, the costs due each person or officer, the time when the judgment was rendered, and the date of the return; and the return shall be recorded therein in full.

Index to execution docket.

SEC. 52. The clerk shall keep an index to the execution docket, showing, in separate columns, the names of all parties against whom and in whose favor an execution has been issued, the number of the execution, and the number of the cause upon the appearance docket. [34 v. 45, § 2, S. & C. 1280.]

Proceedings when order of sale issued in case not on trial docket.

SEC. 53. When an order of sale is issued in a case not on the trial docket, the clerk shall enter it on the execution docket, and enter the subsequent proceedings had in pursuance thereof, in the same manner that executions and proceedings thereon are entered. When a sale of real estate is made in pursuance of such order, it shall be confirmed in all respects as sales on executions are confirmed; and after the sale the officer shall be governed in all respects by the law relating to sales on execution. [Civil Code, § 306, S. & C. 1034.]

SUBDIVISION III. EXEMPTION FROM EXECUTION.

Property of unmarried women exempt from execution.

SEC. 54. Every unmarried woman may hold the following property exempt from execution, attachment, or sale, to satisfy any judgment, decree, or debt, to wit:

1. Wearing apparel, to be selected by her, not exceeding in value one hundred dollars.
2. One sewing-machine.
3. One knitting-machine.
4. Bible, hymn-book, psalm-book, and any other books not exceeding in value twenty-five dollars. [71 v. 59, § 1.]

SEC. 55. Any beneficiary fund, not exceeding five thou-

sand dollars, set apart, appropriated, or paid, by any benevolent association or society, according to its rules, regulations, or by-laws, to the family (of any deceased member, or to any member of such family,) shall not be liable to be taken by any process or proceedings, legal or equitable, to pay any debt of such deceased member. [71 v. 76, § 1.]

Beneficiary funds to be exempt from execution.

SEC. 56. All property used, or kept to be used, by any municipal corporation or fire company, for the purpose of extinguishing fire, shall be exempt from execution and sale to satisfy any judgment, decree, or debt, arising upon contract or otherwise; but the owner thereof may create valid liens thereon by bill of sale or mortgage. [61 v. 36, § 1, S. & C. 1147.]

Property kept and used to extinguish fires exempt.

SEC. 57. The subsequent sections of this subdivision shall not extend to a judgment rendered on a mortgage executed by a debtor and his wife, nor to a claim for work and labor less than one hundred dollars, nor to impair the lien, by mortgage or otherwise, of the vendor for the purchase money of the premises in question, nor the lien of a mechanic, or other person, under any statute of this state, for materials furnished or labor performed in the erection of the dwelling-house thereon, nor for the payment of taxes due thereon. [48 v. 29, § 7, S. & C. 1146.]

When subsequent sections do not apply.

SEC. 58. Every person who has a family, and every widow, may hold the following property exempt from execution, attachment, or sale for any debt, damages, fine, or amercement, to wit:

Exemptions to heads of families and widows.

1. The wearing apparel of such person or family; the beds, bedsteads, and bedding necessary for the use of the same; one cooking-stove and pipe; one stove and pipe used for warming the dwelling; and fuel sufficient for the period of sixty days, actually provided and designed for the use of such person or family.

2. One cow, or if the debtor own no cow, household furniture, to be selected by him or her, not exceeding thirty-five dollars in value; two swine, or the pork therefrom, or, if the debtor own no swine, household furniture, to be selected by him or her, not exceeding fifteen dollars in value; six sheep, the wool shorn from them, and the cloth or other articles manufactured therefrom, or, in lieu thereof, household furniture, to be selected by the debtor, not exceeding fifteen dollars in value; and sufficient food for such animals for the period of sixty days.

3. The bibles, hymn-books, psalm-books, testaments, and school-books used in the family, and all family pictures.

4. Provision actually provided and designed for the use of such person or family, not exceeding fifty dollars in value, to be selected by the debtor; and other articles of household and kitchen furniture, or either, necessary for such person or family, to be selected by the debtor, not exceeding fifty dollars in value.

5. One sewing-machine; one knitting-machine; the tools

and implements of the debtor necessary for carr
or her trade or business, whether mechanical or a
to be selected by him or her, not exceeding o
dollars in value.

6. The personal earnings of the debtor, and t
earnings of his or her minor child or childre
months, when it is made to appear, by the affi
debtor, or otherwise, that such earnings are nece
support of such debtor, or of his or her family
period of three months shall date from the time
any attachment or other process, the rendition o
ment, or the making of any order, under which
may be made to subject such earnings to the pa
debt.

7. All articles, specimens, and cabinets of nat
or science, whether animal, vegetable, or min
such as may be kept or intended for show or ex
money or pecuniary gain. [70 v. 132, § 1.]

Special exemption to physicians, draymen, etc.

SEC. 59. Every person who is the head of a
engaged in the business of draying for a liveliho
addition to the foregoing exemptions, hold one
ness, and dray exempt from execution; every
family who is engaged in the business of agricu
in addition to the exemptions provided for in t
tion, hold exempt from execution one horse, or
cattle, with the necessary gearing for the sam
wagon; and every head of a family who is engs
practice of medicine shall, in addition to the
specified in said section, hold one horse, one saddle
and also books, medicines, and instruments, pe
his profession, not exceeding one hundred dolla
exempt from execution. [70 v. 132, § 2.]

Appraisal of exempted property.

SEC. 60. In all cases where it is necessary to a
amount or value of personal property exempt
subdivision, it shall be estimated and appraised
interested householders of the county, to be sele
officer holding the execution, and by him sworn
ally make such appraisement. [70 v. 132, § 3; 7

Provisions with respect to exemptions to apply to all courts.

SEC. 61. The provisions contained in this
with respect to exemptions shall apply to all co
state, including justices of the peace and mayo
that a person shall be entitled to all the exempt
case or proceeding, or before any court or officer,
be entitled to in any other case or proceeding, o
other court or officer.

Who entitled to exemption.

SEC. 62. Husband and wife living together, a
widower living with an unmarried daughter or
minor son, may hold exempt from sale, on judg
cree, a family homestead not exceeding one thou
in value; provided, the husband, or, in case of h
refusal, the wife, shall have the right to make

therefor; but neither can make demand if the other has a homestead. [66 v. 48, § 1; 68 v. 106, § 1.]

Preceding section applies to owner of superstructures, and lessees.

SEC. 63. A person owning the superstructure of a dwelling-house occupied by him or her as a family homestead, although the title to the land upon which the same is built is in another, and also lessees, shall be entitled to the benefit of the last section, in the same manner as the owner of the freehold or inheritance; but this section shall not be construed to prevent a sale of the fee simple, subject to the lease. [48 v. 29, § 5, S. & C. 1145.]

Homestead for decedent's family.

SEC. 64. On petition of executors or administrators to sell, to pay debts, the lands of a decedent who has left a widow, and a minor child unmarried, and composing part of the defendant's family at the time of his death, the appraisers shall proceed to set apart a homestead, as provided in the next section; and the same shall remain exempt from sale on execution, and exempt from sale under any order of the court, so long as any unmarried minor child resides thereon, although the widow die; and the unmarried minor child or children of a decedent, actually residing on the family homestead, shall be entitled to hold the same exempt from sale on execution, although the parent from whom the same descended left no wife or husband surviving. [48 v. 29, § 3, S. & C. 1145.]

How homestead set off.

SEC. 65. The officer executing any writ of execution founded on a judgment or decree shall, on application of the debtor, his wife, agent, or attorney, at any time before sale, if such debtor have a family, and if the lands or tenements about to be levied upon, or any part or parcel thereof, constitute the homestead thereof, cause the inquest of appraisers, upon their oaths, to set off to such debtor, by metes and bounds, a homestead not exceeding one thousand dollars in value; such assignment of the homestead shall be returned by the officer along with his writ, and shall be copied by the clerk into the execution docket; and if no complaint be made by either party, no further proceedings shall be had against the homestead; but the remainder of the debtor's lands and tenements, if any there be, shall be liable to sale on execution; but upon complaint of either party, and upon good cause shown, the court out of which the writ issued may order a re appraisement and re-assignment of the homestead; provided, that in case no application be made as aforesaid during the lifetime of the debtor, it may be made by the widow of the judgment debtor at any time before a sale. [66 v. 48, § 1.]

Procedure when homestead not divisible.

SEC. 66. When the homestead of a debtor in execution consists of a house and a lot of land which, in the opinion of the appraisers, will not bear division without manifest injury and inconvenience, the plaintiff in execution shall receive, in lieu of the proceeds of a sale of the homestead, the amount over and above one hundred dollars annually adjudged by the appraisers as a fair and reasonable rent for

the same, until the debts, costs, and interest are paid. Such rent, above one hundred dollars, shall be payable in quarterly payments, commencing three months from the time of the levy of the execution, and may be paid to the plaintiff in execution, or to his assigns, or to the clerk of the court of common pleas of the county in which the homestead is situated; and the clerk shall give to the person paying the same a paper [proper] receipt, and enter the payment upon the execution docket, without charge; and if the rent be not paid quarterly, as above provided for, or within ten days after each and every payment becomes due, the officer shall sell such homestead in the manner provided in other cases for the sale of real estate; but such homestead shall not be sold for less than its appraised value; and the plaintiff in execution, or the debtor, may cause the homestead to be re-appraised once in two years, in the manner provided in the preceding section, and the rent shall, after such re-appraisement, be paid in accordance with the re-appraisement; but if a re-appraisement, at the instance of the plaintiff in execution, be less than one hundred dollars more than the next previous appraisement, the costs of such re-appraisement shall be paid by him. [66 v. 48, § 1.]

Allowance in lieu of homestead, and of proceeds of sale thereof.

SEC. 67. When a homestead is charged with liens, some of which, as against the head of the family, or the wife, preclude the allowance of a homestead to either of them, and others of such liens do not preclude such allowance, and a sale of such homestead is had, then, after the payment, out of the proceeds of such sale, of the liens so precluding such allowance, the balance, not exceeding five hundred dollars, shall be awarded to the head of the family, or the wife, as the case may be, in lieu of such homestead, upon his or her application, in person, or by agent or attorney. [66 v. 48, § 1.]

Five hundred dollars worth of property exempt in certain case.

SEC. 68. Any resident of Ohio, being the head of a family, and not the owner of a homestead, may hold exempt from levy and sale personal property, to be selected by such person, his agent, or attorney, at any time before sale, not exceeding five hundred dollars in value, in addition to the amount of chattel property otherwise by law exempted. [70 v. 51. § 1.]

Homestead in property mortgaged by husband.

SEC. 69. No sale of real estate made under a mortgage which is not executed by the wife of the debtor, if he have a wife, shall in any manner affect the right of the debtor's wife or family to have a homestead set off under the provisions of this subdivision. [48 v. 29, § 9, S. & C. 1147.]

Dower not affected.

SEC. 70. Nothing in this subdivision contained shall be so construed as in any way to impair the right of dower, or the mode provided by law for enforcing that right. [48 v. 29, § 10, S. & C. 1147.]

SUBDIVISION IV. WHEN CHATTELS CLAIMED BY THIRD PERSON.

Proceedings when goods levied on are claimed by a third person.

SEC. 71. If the officer, by virtue of a writ of execution issued from any court of record of this state, levy such execution on goods and chattels claimed by a person other than the defendant, such officer shall forthwith give notice in writing to some justice of the peace of the county, in which shall be set forth the names of the plaintiff and defendant, together with the name of the claimant; and at the same time he shall furnish the justice a schedule of the property claimed. The justice shall, immediately upon the receipt of the notice and schedule, make an entry of the same upon his docket, and issue a summons, directed to the sheriff, or any constable of the county, commanding him to summon five disinterested men, having the qualifications of an elector, who shall be named in the summons, to appear before him, at the time and place therein mentioned, which time shall not be more than three days after the date of the writ, to try and determine the right of the claimant to the property in controversy. The claimant shall give two days' notice in writing to the plaintiff, or other party for whose benefit the execution was issued and levied, his agent or attorney, if within the county, of the time and place of trial; and he shall, moreover, prove to the satisfaction of the justice that such notice was given, or that it could not be given by reason of the absence of the party, his agent or attorney. [Civil Code, § 426, S. & C. 1070.]

Trial of the right of property.

SEC. 72. The jurors, summoned as aforesaid, shall be sworn to try and determine the right of the claimant to the property in controversy, and a true verdict to give according to the evidence. If the jury find that the right to the goods and chattels, or any part thereof, is in the claimant, they shall also find the value thereof; and the justice shall render judgment upon such finding for the claimant, that he recover his costs against the plaintiff in execution, or other party for whose benefit the execution issued, and also that he have restitution of the goods and chattels, or any part thereof, according to the finding of the jury; but if the jury find that the right to the goods and chattels, and every part thereof, is not in the claimant, then the justice shall render judgment on such finding in favor of the plaintiff in execution, or other party for whose benefit the execution issued, and against the claimant, for costs, and award execution thereon. If the jury fail to agree, and be discharged, costs shall be taxed, to abide the final event of the proceeding before the justice, and another jury shall be summoned in like manner as before. A judgment for the claimant, unless an undertaking be executed, as provided in the next section, shall be a justification of the officer in returning "no goods" to the writ of execution by virtue of which the levy was made, as to such part of the goods and chattels as were found to belong the claimant. The same fees shall be allowed and

taxed by the justice for himself, officers, jurors, and witnesses, as are allowed by law for like services in other cases. [Civil Code, § 427, S. & C. 1071.]

Proceedings when jury find for plaintiff.

SEC. 73. If the jury find that the property, or any part thereof, is in the claimant, and the plaintiff in execution, at any time within three days after the trial, tender to the officer having the property in his custody on execution, an undertaking, in double the amount of the value of the property as assessed by the jury, with good and sufficient sureties, payable to the claimant, to the effect that they will pay all damages sustained by reason of the detention or sale of the property, the officer shall deliver such undertaking to the claimant, and proceed to sell the property as if no trial of the right thereto had taken place, and shall not be liable to the claimant therefor. [Civil Code, § 428, S. & C. 1071.]

SUBDIVISION V. EXECUTION AGAINST THE PERSON.

Requisites of execution against the person.

SEC. 74. An execution against the person of the judgment debtor shall require the officer to arrest such debtor, and commit him to the jail of the county until he pay the judgment, or be discharged according to law. [Civil Code, § 477, S. & C. 1091.]

For what causes may issue.

SEC. 75. An execution against the person of the debtor may be issued upon any judgment for the payment of money—

1. When the judgment debtor has removed, or begun to remove, any of his property out of the jurisdiction of the court, with intent to prevent the collection of the money due on the judgment.

2. When he has property, rights in action, evidences of debt, or interest or stock in a corporation or company, which he fraudulently conceals with the like intent.

3. When he has assigned or disposed of all or part of his property, or rights in action, or has converted the same into money, with intent to defraud his creditors, or with the intent to prevent such property from being taken in execution.

4. When he fraudulently contracted the debt or incurred the obligation upon which the judgment was rendered.

5. When he was arrested on an order before judgment, and has not been discharged as an insolvent debtor, or the order has not been set aside as improperly made. [Civil Code, § 478, S. & C. 1092.]

By whom and how allowed.

SEC. 76. An execution against the person of the debtor, except as prescribed in section seventy-eight of this chapter, can be issued only when allowed by the supreme court, the district court, the court of common pleas, or the probate court, or any judge of either, upon being satisfied, by the affidavit of the judgment creditor, or his attorney, and such other evidence as may be presented, of the existence of one

or more of the particulars mentioned in the last section. [Civil Code, § 479, S. & C. 1092.]

May be issued by justice of the peace.

SEC. 77. A justice of the peace may issue an execution against the person of a judgment debtor, upon being satisfied of the existence of one or more of the same particulars, by like affidavit and evidence. [Civil Code, § 480, S. & C. 1092.]

When issued of course.

SEC. 78. When the judgment debtor was arrested before judgment, and has not been released from imprisonment by an application for relief as an insolvent debtor, and the order for such arrest has not been adjudged improper, an execution against the person of such judgment debtor may issue of course. [Civil Code, § 481, S. & C. 1092.]

Discharge by delivery of property.

SEC. 79. A person taken in execution as aforesaid shall be discharged by delivering or setting off to the officer serving the writ, if issued from a court of record, real or personal property, or if issued by a justice of the peace, personal property only, sufficient to satisfy the judgment and costs for which the writ was issued. [Civil Code, § 482, S. & C. 1092.]

Entitled to prison bounds, but execution may issue against property.

SEC. 80. A person imprisoned under the provisions of this subdivision shall be entitled to prison bounds, as prescribed by law; but in case the person is out of jail in prison bounds, the judgment creditor, upon whose judgment he was imprisoned, shall be entitled to execution against the lands and tenements, goods and chattels of the debtor, and all other remedies prescribed by law for the collection of debts. [Civil Code, § 483, S. & C. 1092.]

Death of debtor no satisfaction of judgment.

SEC. 81. The death of a person under arrest in an action shall not satisfy the judgment; but an execution may issue on the judgment as if no arrest had been made. [Civil Code, § 484, S. & C. 1093.]

A person arrested before judgment must be charged in execution within ten days.

SEC. 82. If a person who is imprisoned under an order of arrest made before judgment, be not charged in execution within ten days after judgment, he shall be discharged from such imprisonment. [Civil Code, § 485, S. & C. 1093.]

When debtor may be discharged.

SEC. 83. A person imprisoned under this subdivision, or upon an order of arrest before judgment in civil cases, who is unable to perform the act, or endure the imprisonment, may be discharged therefrom upon such terms as are just, by the court of which the process issued, or a judge thereof, or by the court, or a judge thereof, in which the judgment was or might have been rendered. [Civil Code, § 486, S. & C. 1093.]

SUBDIVISION VI. PRIVILEGE FROM ARREST.—PRISON BOUNDS.

Who are privileged from arrest, and when.

SEC. 84. The following persons are privileged from arrest, viz.:

1. Members, clerks, sergeants-at-arms, door-keepers, and messengers of the senate and house of representatives, during sessions of the general assembly, and while traveling to and from such sessions, allowing one day for every twenty-

Members and officers of the legislature.

five miles of the distance, by the route most usually traveled; and whoever arrests any such person in violation of this provision shall forfeit and pay one hundred dollars, to be recovered by civil action, in the name and for the use of the person injured. [59 v. 6, § 1, S. & S. 18; 29 v. 341, § 2, S. & C. 84.]

Electors.

2. Electors, while going to, returning from, or in attendance at eleciions. [29 v. 341, § 3, S. & C. 84.]

Judges.

3. Judges of the courts, while attending court, and also during the time necessarily employed in going to, holding, and returning from the court which it is their duty to attend. [29 v. 341, § 4, S. & C. 84.]

Officers of the court.

4. Attorneys, counsellors at law, clerks, sheriffs, coroners, constables, and criers, and all suitors, jurors, and witnesses, while going to, attending, or returning from court. [29 v. 341, § 5, S. & C. 84.]

Females, and soldiers of the revolutionary war.

5. Officers and soldiers of the revolutionary war, and females, on any mesne or final process, for any debt, claim, or demand arising upon contract. [29 v. 341, § 7, S. & C. 84.]

Israelites and others.

6. Israelites, and such other persons as religiously observe the last or any other day of the week as a day of worship, on such day, within, going to, or returning from their places of worship, or during the time of service, and while going to or returning therefrom. [52 v. 320, § 1, S. & C. 85.]

Militia.

7. A person doing militia duty under the order of his commanding officer, or while going to or returning from the place of duty or parade. [29 v. 341, § 6, S. & C. 84.]

When and where arrests may not be made.

SEC. 85. No person shall be arrested during a sitting of the senate, or house of representatives, within the hall where such session is being held; nor in any court of justice, during the sitting of such court; nor on the first day of the week, commonly called Sunday; nor on the fourth day of the month of July. [29 v. 341, § 7, S. & C. 84.]

This subdivision does not extend to crimes, etc.

SEC. 86. Nothing in this subdivision contained shall be construed to extend to cases of treason, felony, or breach of the peace, or to privilege any person herein specified from being served at any time with a summons or notice to appear; and all arrests, not contrary to the provisions herein contained, made in any place, or on any river or watercourse within or bounding on this state, shall be deemed lawful. [29 v. 341, § 8, S. & C. 84.]

Notice to be given when member or officer of legislature arrested.

SEC. 87. When, during a session of the general assembly, a member or officer thereof is arrested upon a charge of treason, felony, or breach of the peace, notice thereof shall be given forthwith to the body with which he is connected, by the officer who issued the process upon which the arrest is made. [29 v. 341, § 9, S. & C. 84.]

How and when prisoner may be discharged.

SEC. 88. A person arrested contrary to the provisions of this subdivision shall be discharged by a writ of habeas corpus, or in a summary way, by motion before the court from which the process issued, at the cost of the party who sued out the process. [29 v. 341, § 10, S. & C. 84.]

Prison bounds fixed.

SEC. 89. A person imprisoned for debt shall be entitled to the privilege of prison bounds, which shall be co-extensive with the limits of the county; but such prisoner shall in no instance pass over or without such limits. [29 v. 340, § 1, S. & C. 1210; 31 v. 11, § 1, S. & C. 1211.]

When prison er entitled to benefit of prison bounds.

SEC. 90. A prisoner shall not be entitled to the privilege of prison bounds until he gives bond to the creditors, with two or more sureties, resident in the county, approved by the justice or mayor who issued the process, or, in other cases, by the probate judge, in double the sum for which he stands committed, for his safe continuance in the custody of the jailor, within the limits of the prison bounds, until legally discharged; which bond shall be lodged with the sheriff until the creditor demands the same; and when the condition of the bond is broken, the creditor may put the bond in suit, and have judgment entered against the sureties, for the debt, interest, and costs, for which the prisoner stands committed. [29 v. 340, § 2, S. & C. 1210.]

CHAPTER 2.

PROCEEDINGS IN AID OF EXECUTION.

SUBDIVISION I. *By civil action.*
SUBDIVISION II. *By garnishment against railroad companies.*
SUBDIVISION III. *By examination of debtor.*
SUBDIVISION IV. *By attachment.*

SUBDIVISION I.

SECTION
1. When judgment creditor may proceed against equitable assets, etc.

SUBDIVISION II.

2. Against railroad companies.
3. Notice to garnishee.
4. Examination of garnishee.
5. Attachment against garnishee upon failure to appear or refusal to answer.
6. Garnishee to deliver money and property to officer.
7. Officer to sell property.
8. When assignments void.

SUBDIVISION III.

9. Examination of debtor after return of execution.
10. Examination of debtor before return of execution.
11. When order of arrest may issue, and proceedings thereon.
12. Examination of debtor of judgment debtor, etc.
13. Existence of fraud not to excuse examination.
14. Reference by judge.
15. Proceedings may be continued.

SUBDIVISION III—Continued.

SECTION
16. How attendance of parties and witnesses compelled.
17. Examination before referee to be certified; oath of witness.
18. How disobedience of order punished.
19. Debtor may pay execution against creditor.
20. Judge may order property to be applied on execution.
21. Judge may appoint receiver, and prohibit transfer, etc., of property.
22. Liability of sheriff on official bond, and undertaking by receiver.
23. Proceedings when indebtedness denied, or another claims the property.
24. Pleadings to be reduced to writing, and filed with clerk.
25. Compensation of probate judge.
26. Costs.

SUBDIVISION IV.

27. When enforced by attachment.

SUBDIVISION I. BY CIVIL ACTION.

When judgment creditor may proceed against equitable assets, etc.

SECTION 1. When a judgment debtor has not personal or real property subject to levy on execution sufficient to satisfy the judgment, any equitable interest which he has in real estate, as mortgagor, mortgagee, or otherwise, or any interest he has in any banking, turnpike, bridge, or other joint stock company, or in any money contracts, claims, or choses in action, due or to become due to him, or in any judgment or decree, or any money, goods, or effects which he has in the possession of any person, body politic or corporate, shall be subject to the payment of the judgment, by action. [Civil Code, § 458, S. & C. 186.]

SUBDIVISION II. BY GARNISHMENT AGAINST RAILROAD COMPANIES.

Against railroad companies.

SEC. 2. The plaintiff, or his agent or attorney, in a judgment against a railroad company, rendered in any court, upon a claim due to common laborers for work and labor performed for the company, or for cross-ties, lumber, or wood furnished thereto, to be used in the construction, repair, or operation of its road, or for the erection of fences along the line of its road, required by law to be erected, or upon a note, or other evidence of indebtedness, given for the considerations aforesaid, may file with a precipe for execution upon such judgment his affidavit, setting forth the claim upon which the judgment is founded, that he has no knowledge of any property of the defendant liable to levy and sale upon the execution, and that a person or corporation, to be therein named, and within the jurisdiction of the officer to whom the execution is to be directed, is indebted to the defendant, or has property or claims of the defendant in his possession or under his control, as agent of the defendant, or otherwise; and thereupon the clerk shall issue a notice to each person or corporation named, to the effect that he is required to pay

over and deliver to the officer holding such writ the money, property, and claims of the defendant in his possession or under his control, or which may come into his possession or under his control at any time before the satisfaction of the judgment, not exceeding an amount sufficient to pay the same and costs. [63 v. 126, § 1, S. & S. 119.]

Notice to garnishee.

SEC. 3. The officer shall serve upon each garnishee named in the notice a copy of the execution and notice, and the person so served shall be bound to the plaintiff in execution, from the date of such service, for all the money, property, and credits of the defendant, in his possession or under his control, or which may come into his possession or under his control, at any time before the satisfaction of the judgment. [56 v. 120, § 2, S. & C. 1174.]

Examination of garnishee.

SEC. 4. The garnishee may be required, by a written notice, at any time after service on him as above provided, to appear before any officer within his township competent to administer oaths, or before the clerk of the court of common pleas of his county, and answer such questions as may be asked him touching the property of every description, moneys, and credits of the defendant, in his possession or under his control; the notice shall be signed by the plaintiff, or his agent or attorney, shall specify the time when and place where the examination will be held, and shall be served at least one day before the day fixed for the examination; and the examination shall be reduced to writing, signed by the garnishee, certified by the officer before whom it was taken, and filed with the papers in the case. The garnishee shall be entitled to the same fees for attendance as are allowed to witnesses. [57 v. 120, § 3, S. & C. 1174.]

Attachment against garnishee upon failure to appear or refusal to answer.

SEC. 5. If the garnishee refuse to appear, as required by the notice, an attachment may be issued against him, upon proof made of due service of the notice; or if, having appeared, he refuse to answer such questions as may be asked him as aforesaid, the officer before whom the examination is being had shall commit him to the jail of the county until he answers such questions, or is discharged according to law. [57 v. 120, § 4, S. & C. 1174.]

Garnishee to deliver money and property to officer.

SEC. 6. The garnishee shall pay over to the officer all money in his hands, or under his control, or which may come into his hands or control, belonging to the defendant, not exceeding the amount of the judgment and costs, and shall deliver all property and credits of the defendant in his hands, or which may come into his hands, to the officer, and take his receipt for such money, property, or credits, which receipt shall be a sufficient discharge of liability therefor; and upon refusal by such garnishee to pay over or deliver as aforesaid, the plaintiff may commence an action therefor, in his own name, against the garnishee, and recover the same with costs. [57 v. 120, § 5, S. & C. 1174.]

Officer to sell property.

SEC. 7. The officer shall sell, as upon execution, any property of the defendant so delivered to him, which would be

liable to seizure and sale upon execution, and shall hold all the other property to abide the order of the court. [57 v. 120, § 6, S. & C. 1174.]

When assignments void.

SEC. 8. An assignment or transfer of property in the hands or under the control of any agent of such railroad company, at the date of the service of notice of garnishment, or which may afterwards, and before the satisfaction of the judgment, come into his hands or under his control, shall be void as against judgment claimants under this subdivision. [57 v. 120, § 7, S & C. 1174.]

SUBDIVISION III. BY EXAMINATION OF DEBTOR.

Examination of debtor after return of execution.

SEC. 9. When an execution against the property of a judgment debtor, or of one of several debtors in the same judgment, issued to the sheriff of the county where he resides, or if he does not reside in the state, to the sheriff of the county where the judgment was rendered, or a transcript of a justice's judgment has been filed, is returned unsatisfied, in whole or in part, the judgment creditor shall be entitled to an order from a probate judge, or a judge of the court of common pleas, of the county to which the execution was issued, requiring such debtor to appear and answer concerning his property before such judge, or a referee appointed by such judge, at a time and place within the county specified in the order. [Civil Code, § 459, S. & C. 1089.]

Examination of debtor before return of execution.

SEC. 10. After the issue of an execution against property, and upon proof by the affidavit of the judgment creditor, or otherwise, to the satisfaction of the court of common pleas, or a judge thereof, or a probate judge, of the county in which the debtor is found, that the judgment debtor has property which he unjustly refuses to apply toward the satisfaction of the judgment, such court, or judge may, by order, require the judgment debtor to appear at a time and place in such county, to answer concerning the same; and such proceedings may thereupon be had, for the application of the property of the judgment debtor toward the satisfaction of the judgment, as are prescribed in this subdivision. [Civil Code, § 460, S. & C. 1089.]

When order of arrest may issue, and proceedings thereon.

SEC. 11. Instead of the order requiring the attendance of the judgment debtor, as provided in the last two sections, the judge may, upon proof, in writing, to his satisfaction, by affidavit of the judgment creditor, or otherwise, that there is danger of the debtor leaving the state, or concealing himself, to avoid the examination herein mentioned, issue a warrant requiring the sheriff to arrest and bring before him the debtor. Such warrant can be issued only by a judge of the court of common pleas, or the probate judge, of a county in which the debtor is found, and the sheriff can execute it only within that county; and in executing it the sheriff shall deliver to the debtor a copy of the warrant, and of the testimony on which the warrant issued. The debtor, when

brought before the judge, shall be examined on oath; and other witnesses may be examined on either side; and if it appear in the examination that there is danger of the debtor leaving the state, or that he has property which he unjustly refuses to apply to the judgment, he may be ordered to enter into an undertaking, with surety, in such sum as the judge may prescribe, that he will attend before the judge or referee for examination, from time to time, as shall be directed; and in default of entering into such undertaking, he may be committed to the jail of the county, by warrant of the judge, as for contempt. [Civil Code, § 461, S. & C. 1089.]

Examination of debtor of judgment debtor, etc.

SEC. 12. After the return of an execution against the property of a judgment debtor, or of one of several debtors in the same judgment, and upon proof, in writing, by affidavit, or otherwise, to the satisfaction of the judge, that a person or corporation has property of such judgment debtor, or is indebted to him, the judge may, by an order, require such person or corporation, or any officer or member of the corporation, to appear at a specified time and place, within the county in which such person or corporation is served with the order, and answer concerning the same. The service of the order shall bind the property in the possession or under the control of such person or corporation, from the time of service; and the person or corporation so served with the order shall be liable to the judgment creditor for all property, money, and credits in his hands belonging to the judgment debtor, or due to him from such person or corporation, from the time of service; but if, on the filing of the affidavit of the judgment creditor, his agent or attorney, the judge is satisfied of the existence of any of the grounds upon which an order of attachment may be issued, as provided in section one, chapter two, division six, of this title, the order may be issued before the issue and return of execution. The judge may also, in his discretion, require notice of such proceeding to be given to any party in the action, in such manner as may seem to him proper. [Civil Code, § 464, 71 v. 53.]

Effect of such order.

Existence of fraud not to excuse examination.

SEC. 13. No person shall, on examination pursuant to this subdivision, be excused from answering any question on the ground that his examination will tend to convict him of a fraud; but his answer shall not be used as evidence against him in a prosecution for such fraud. [Civil Code, § 462, S. & C. 1089.]

Reference by judge.

SEC. 14. The judge may, in his discretion, order a reference to a referee agreed upon, or appointed by him, to report the evidence or the facts. [Civil Code, § 472, S. & C. 1091.]

Proceedings may be continued.

SEC. 15. The judge or referee, acting under the provisions of this chapter, may continue his proceedings from time to time, until they are completed. [Civil Code § 471, S. & C. 1091.]

How attendance of parties and witnesses compelled.

SEC. 16. A party or witness may be compelled, by an order of the judge, or by a subpœna, to attend before a judge or referee, to testify. [Civil Code, §§ 465, 466, S. & C. 1090.]

Examination before referee to be certified.

Oath of witness.

SEC. 17. If before a referee, the examination must be taken by the referee, and certified to the judge. All examations and answers before a judge or referee must be on oath; and when a corporation answers, the answer must be on the oath of an officer thereof. [Civil Code, § 466, S. & C. 1090.]

How disobedience of order punished.

SEC. 18. If a person, party, or witness disobey an order of the judge or referee, duly served, he may be punished as for contempt; and such judge or referee may enforce order and punish for contempt in like manner as justices of the peace. [Civil Code, § 473, S. & C. 566.]

Debtor may pay execution against creditor.

SEC. 19. After the issue of execution against property, a person indebted to the judgment debtor may pay to the sheriff the amount of his debt, or so much thereof as may be necessary to satisfy the execution; and the sheriff's receipt shall be a sufficient discharge for the amount so paid, or directed to be credited by the judgment creditor on the execution. [Civil Code, § 463, S. & C. 1089.]

Judge may order property to be applied on execution.

SEC. 20. The judge may order any property of the judgment debtor, or money due to him, not exempt by law, in the hands either of himself or other person, or of a corporation, to be applied toward the satisfaction of the judgment; but the earnings of the debtor for his personal services, at any time within three months next preceding the order, can not so be applied, when it is made to appear by the debtors affidavit, or otherwise, that such earnings are necessary for the use of a family supported wholly or partly by his labor. [Civil Code, § 467, S. & C. 1090.]

Judge may appoint receiver, and prohibit transfer, etc., of property.

SEC. 21. The judge may, by order, appoint the sheriff of the proper county, or other suitable person, a receiver of the property of the judgment debtor; and he may also, by order, forbid a transfer, or other disposition of, or any interference with, the property of the judgment debtor not exempt by law. [Civil Code, § 468, S. & C. 1090.]

Liability of sheriff on official bond; undertaking by receiver.

SEC. 22. If the sheriff be appointed receiver, he and his sureties shall be liable on his official bond as such receiver; and if another person be appointed, he shall take an oath, and give an undertaking as in other cases. [Civil Code, § 470, S. & C. 1091.]

Proceedings when indebtedness denied, or another claims the property.

SEC. 23. If it appear that the judgment debtor has an interest in real estate, in the county in which proceedings are had, as mortgagor, mortgagee, or otherwise, and his interest can be ascertained as between himself and the person holding the legal estate, or the person having a lien on or interest in the same, without controversy as to the interest of such person holding such legal estate, or interest therein, or lien on the same, the receiver may be ordered to sell and convey such real estate, or the debtor's interest therein. Such sale shall be conducted, in all respects, in the same manner as is provided for the sale of real estate upon execution; and the proceedings of sale shall, before the execution of the deed, be approved by the court in which the

judgment was rendered, or the transcript filed. [Civil Code, § 469, S. & C. 1090.]

Pleadings to be reduced to writing, and filed with clerk.

SEC. 24. The order mentioned in sections nine, ten, and twelve of this chapter, shall be in writing, and signed by the judge making the same, and shall be served as a summons. The judge shall reduce all his orders to writing, which, together with a minute of his proceedings, signed by himself, shall be filed with the clerk of the court of the county in which the judgment is rendered, or the transcript of the justice is filed, and the clerk shall enter on his execution docket the time of filing the same. [Civil Code, § 474, S. & C. 1091.]

Compensation of probate judge.

SEC. 25 The probate judge shall be allowed for his services under this subdivision the sum of three dollars in each case, and such fees as are allowed by law to clerks of the court of common pleas for similar services. [Civil Code, § 476, S. & C. 1091.]

Costs.

SEC. 26. The judge shall allow to clerks, sheriffs, referees, receivers, and witnesses, such compensation as is allowed for like services in other cases, to be taxed as costs in the case, and shall enforce by order the collection thereof, from such party or parties as ought to pay the same. [Civil Code, § 475, S. & C. 1091.]

SUBDIVISION IV. BY ATTACHMENT.

When enforced by attachment.

SEC. 27. When the judgment is not for the recovery of money or real property, the same may be enforced by attachment, by the court rendering judgment, upon motion made, or by a rule of the court upon the defendant; but in either case notice of the motion, or a service of a copy of the rule, shall be made on the defendant a reasonable time before the order of attachment is made. [Civil Code, § 488, S. & C. 1093.]

DIVISION 6. PROVISIONAL REMEDIES.

CHAPTER 1. ARREST AND BAIL.

CHAPTER 2. ATTACHMENT.

CHAPTER 3. ATTACHMENT BEFORE DEBT DUE.

CHAPTER 4. INJUNCTIONS.

CHAPTER 5. RECEIVERSHIP, AND OTHER PROVISIONAL REMEDIES.

CHAPTER 1.

ARREST AND BAIL.

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3. Not to be issued unless bond is given.
4. When it may issue.
5. To whom the order of arrest to be delivered, and its contents.
6. When returnable.
7. How executed.
8. What to be done with the defendant.
9. Defendant may deposit money, and be discharged.
10. Money deposited to be paid into court.
11. Court to have control of money.
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27. Mode of rest, or of bail.
28. Motion m opposed
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30. When sh prisoner

Arrest in civil actions only as prescribed by this title.

SECTION 1. A defendant in a civil actio before judgment, in the manner prescribed not otherwise; but this provision shall n ceedings for contempt, nor to actions prosecu obtained in the name of the state of Ohio, or penalties. [Civil Code, § 145, S. & C. 99

By whom and when an order of arrest may be made.

SEC. 2. An order for the arrest of the de made by the clerk of the court in which the a when there is filed in his office an affidavit his authorized agent or attorney, made b clerk of any court of the state, or a justi stating the nature of the plaintiff's claim, and the amount thereof, as nearly as may be, one or more of the following particulars:

1. That the defendant has removed, or b any of his property out of the jurisdiction intent to defraud his creditors.

2. That he has begun to convert his pr thereof, into money, for the purpose of placi reach of his creditors.

3. That he has property, or rights of a fraudulently conceals.

4. That he has assigned, removed, dispo to dispose of, his property, or a part thereo defraud his creditors.

5. That he fraudulently contracted the debt, or incurred the obligation, for which suit is about to be or has been brought.

The affidavit shall also contain a statement of the facts claimed to justify the belief in the existence of one or more of such particulars. [Civil Code, § 146, S. & C. 991.]

Not to be issued unless bond is given.

SEC. 3. The order of arrest shall not be issued by the clerk until there is executed, by sufficient sureties of the plaintiff, a written undertaking, to the effect that the plaintiff shall pay to the defendant all damages, not exceeding double the amount of the plaintiff's claim stated in the affidavit, which he may sustain by reason of the arrest if the order be wrongfully obtained. [Civil Code, § 147, S. & C. 992.]

When it may issue.

SEC. 4. The order may be made to accompany the summons, or at any time afterward, before judgment. [Civil Code, § 148, S. & C. 992.]

To whom the order of arrest to be delivered, and its contents.

SEC. 5. It shall be addressed, and delivered, with a copy of the affidavit, to the sheriff, and shall specify the names of the parties, the court in which the action is brought, and the amount of the plaintiff's claim stated in the affidavit, and shall require the sheriff to arrest the defendant, and hold him in bail in double that sum, and to make return of the order on a day to be named therein, with the undertaking of the bail, if any be given. [Civil Code, § 149, S. & C. 992.]

When returnable.

SEC. 6. The return day of the order of arrest, when issued at the commencement of the suit, shall be the same as that of the summons; and when issued afterward, it shall be fifteen days after it issued. [Civil Code, § 150, S. & C. 992.]

How executed.

SEC. 7. The sheriff shall execute the order by arresting the defendant, and delivering to him a copy thereof, and of the affidavit. If the defendant cannot be found before the return day, the plaintiff may have further orders, without other affidavit or undertaking, until the defendant is arrested; but an order of arrest shall not be issued to any other than the county in which the action is brought. [Civil Code, § 151, S. & C. 992.]

What to be done with the defendant.

SEC. 8. The defendant, when arrested, shall be committed to the jail of the county, and kept in custody until discharged by law. [Civil Code, § 152, S. & C. 992.]

Defendant may deposit money, and be discharged.

SEC. 9. The defendant may, before or after giving bail, deposit with the sheriff, or in court, the amount of money specified in the order of arrest; whereupon he shall be discharged, or his bail, if any be given, shall be released. [Civil Code § 153, S. & C. 993.]

Money deposited to be paid into court.

SEC. 10. The sheriff shall pay into court the money received by him in lieu of bail; if received in vacation, he shall pay it on the first day of the next term, and if received during the term, he shall pay it immediately. [Civil Code, § 154, S. & C. 993.]

Courts to have control of money.

SEC. 11. The court shall make proper orders for the safekeeping of money deposited in lieu of bail. It may direct the sheriff to keep the money, and, after final judgment in

the action, shall order it to be paid to the party entitled thereto, according to the result. [Civil Code, § 155, S. & C. 993.]

Sheriff and sureties liable for money.

SEC. 12. Money so deposited with the sheriff, or directed by the court to be kept by him, shall be held upon his official responsibility; and he and his sureties shall be liable, and may be proceeded against, for any default in relation thereto, as in other cases of delinquency. [Civil Code, § 156, S. & C. 993.]

When and how bail to be taken.

SEC. 13. Bail may be given by the defendant on his arrest, or at any time afterward, before judgment. It shall be done by causing sufficient bail to execute a written undertaking to the plaintiff, in the presence of the sheriff, to the effect that, if judgment be rendered in the action against the defendant, he will render himself amenable to the process of the court thereon. The undertaking, when accepted, shall be returned to the clerk's office, and the defendant shall be discharged. [Civil Code, § 157, S. & C. 993.]

Plaintiff may object to bail.

SEC. 14. The plaintiff, or his attorney, may object to the bail for insufficiency, at any time within ten days after the undertaking is given, by serving upon the sheriff a written notice that he does not accept the bail; a failure to serve such notice shall be deemed an acceptance of the bail, and the sheriff shall be exonerated from liability. When the undertaking is given after the return of the order of arrest, the plaintiff shall have notice thereof. [Civil Code, § 158, S. & C. 994.]

Notice of justification.

SEC. 15. The sheriff, or the defendant, may, within ten days after the receipt of such notice, give to the plaintiff, or his attorney, notice in writing of the justification of the same or other bail, before a judge or clerk of the court in which the action is brought, a probate judge, or a justice of the peace, at a time—not less than five nor more than ten days thereafter, and place specified therein. If other bail be given, a new undertaking must be executed. [Civil Code, § 159, S. & C. 994.]

Manner of justification.

SEC. 16. For the purpose of justification, each of the bail must attend before the proper officer, at the time and place mentioned, and may be examined on oath touching his sufficiency, in such manner as the officer deems proper. [Civil Code, § 160, S. & C. 994.]

Allowance of bail.

SEC. 17. If the officer find the bail sufficient, he shall indorse his allowance on the undertaking, and cause it to be filed with the clerk; and the sheriff shall thereupon be discharged from liability. [Civil Code, § 161, S. & C. 994.]

When sheriff liable as bail, and how discharged.

SEC. 18. If, after the arrest of the defendant, he escape or be rescued, or bail be not taken or be adjudged insufficient or a deposit be not made, the sheriff shall be liable as bail; but he may discharge himself from liability by putting in sufficient bail at any time before judgment. [Civil Code, § 162, S. & C. 994.]

SEC. 19. The return of "not found," upon an execution

against the body of the defendant, shall be necessary to fix the liability of the sheriff as bail, which liability shall be the amount of the judgment, interest, and costs. This liability can be enforced only in a separate action against him, or against him and his sureties on his official bond, as in other cases of delinquency. [Civil Code, § 163, S. & C. 994.]

Liability of sheriff, how fixed.

SEC. 20. The bail adjudged insufficient shall be liable to the sheriff for the damages he may sustain by reason of such insufficiency. [Civil Code, § 164, S. & C. 994.]

Bail adjudged insufficient liable to sheriff.

SEC. 21. The liability of the bail shall be fixed in the manner provided in section nineteen of this chapter for fixing the liability of the sheriff as bail; and the bail can be proceeded against in an action only. [Civil Code, § 165, S. & C. 994.]

Liability of bail—how fixed.

SEC. 22. A surrender of the defendant to the sheriff of the county in which he was arrested, with a delivery of a certified copy of the undertaking of the bail, whether such surrender is made by the defendant himself, or by his bail, shall discharge the bail. Such surrender may be made at any time before the return day of the summons in an action against the bail. The sheriff shall give to the bail a written acknowledgment of the surrender, and hold the defendant in his custody upon such copy of the undertaking of the bail, as upon an order of arrest. The clerk of the court shall, on the production to him of the sheriff's acknowledgment of the surrender, enter on the undertaking an exoneration of the bail. [Civil Code, § 166, S. & C. 994.]

Surrender of defendant a discharge of bail.

SEC. 23. The bail may, for the purpose of surrendering the defendant, arrest him at any time or place before he is finally charged, or, by a written authority indorsed on a certified copy of the undertaking, may empower any person of suitable age and discretion to do so. [Civil Code, § 167, S. & C. 995.]

Bail may arrest defendant.

SEC. 24. The bail will be exonerated by the death of the defendant, or by his imprisonment in a state prison, or by his legal discharge from the obligation to render himself amenable to the process of the court, or by his surrender to the sheriff of the county in which he was arrested in the execution of such process, within the time fixed in section twenty-two of this chapter, or within such further time as the court in which the action is pending may allow. [Civil Code, § 168, S. & C. 995.]

For what causes bail may be exonerated.

SEC. 25. If money be deposited by the defendant, as provided in section nine of this chapter, bail may be given and justified, upon notice as prescribed in section fifteen of this chapter, at any time before judgment; and thereupon the court in which the action is brought, on being satisfied that the bail has been given and adjudged sufficient, shall direct that the money deposited be refunded to the defendant, and it must be refunded accordingly. [Civil Code, § 169, S. & C. 995.]

Bail may be substituted for a deposit of money.

SEC. 26. If, at any time before or after judgment against

When proceedings against bail may be stayed, and bail discharged.

the bail, proceedings in error be commenced on the judgment against the principal, in the suit in which their undertaking was taken, the court may, on motion, stay proceedings against such bail for a reasonable time, on payment by them of all costs that have accrued against them; and if, on such proceedings, the judgment against the principal be reversed, and the principal be discharged from such suit, the bail shall be discharged from the undertaking. [Civil Code, § 170, S. & C. 996.]

Mode of vacating order of arrest, or reducing the amount of bail.

SEC. 27. A defendant who is arrested may, on motion, at any time before judgment in the action, apply to the court in which suit is brought, if in session, and, in vacation, to a judge thereof, or to any judge of a court of record of the state, to vacate the order of arrest, or to reduce the amount of the bail; and the court or judge shall allow to him such time for preparation, and the hearing of the motion, as is just and reasonable. Reasonable notice of such motion must be given to the plaintiff. [Civil Code, § 171, S. & S. 544.]

Motion may be supported and opposed by affidavits.

SEC. 28. When the motion is made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits, or other evidence, in addition to the evidence on which the order of arrest was made. [Civil Code, § 172, S. & C. 996.]

Jail fees—how paid.

SEC. 29. A person who causes another to be committed to jail under the provisions of this chapter, shall be liable, in the first instance, for the jail fees, and shall, if required by the jailer, pay such fees weekly in advance; and the fees so paid shall be a part of the costs of the case. [Civil Code, § 173, S. & C. 996.]

When sheriff may discharge prisoner.

SEC. 30. The sheriff or jailer may discharge a person imprisoned on mesne or final process issued in a civil proceeding, at any time when there is no money in his hands to pay for the sustenance of such prisoner; or he may detain the prisoner, and hold the adverse party liable for such sustenance. [51 v. 179, § 168, S. & C. 799.]

CHAPTER 2.

ATTACHMENT.

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SUBDIVISION II. *How attachment obtained.*
SUBDIVISION III. *Execution and return thereof.*
SUBDIVISION IV. *Disposition of attached property.*
SUBDIVISION V. *Proceedings upon attachment.*
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SECTION

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SUBDIVISION I. GROUNDS OF ATTACHMENT.

Grounds upon which plaintiff may have attachment.

SECTION 1. In a civil action for the recovery of money, the plaintiff may, at or after the commencement thereof, have an attachment against the property of the defendant, and upon the grounds herein stated:

1. When the defendant, or one of several defendants, is a foreign corporation, or a non-resident of this state; or,

2 Has absconded, with the intent to defraud his creditors; or,

3. Has left the county of his residence, to avoid the service of a summons; or,

4. So conceals himself that a summons cannot be served upon him; or,

5. Is about to remove his property, or a part thereof, out of the jurisdiction of the court, with the intent to defraud his creditors; or,

6. Is about to convert his property, or a part thereof, into money, for the purpose of placing it beyond the reach of his creditors; or,

7. Has property or rights in action, which he conceals; or,

8. Has assigned, removed, disposed of, or is about to dispose of, his property, or a part thereof, with the intent to defraud his creditors; or,

9. Has fraudulently or criminally contracted the debt, or incurred the obligation, for which suit is about to be or has been brought.

But an attachment shall not be granted on the ground that the defendant is a foreign corporation, or a non-resident of this state, for any claim other than a debt or demand arising upon contract, judgment, or decree, or for causing death by a negligent or wrongful act. [Civil Code, § 191, S. & S. 549.]

SUBDIVISION II. HOW ATTACHMENT OBTAINED.

Requisites of affidavit for attachment.

SEC. 2. An order of attachment shall be made by the clerk of the court in which the action is brought, in any case mentioned in the preceding section, when there is filed in his office an affidavit of the plaintiff, his agent or attorney, showing—

1. The nature of the plaintiff's claim;

2. That it is just;

3. The amount which the affiant believes the plaintiff ought to recover; and

4. The existence of any one of the grounds for an attachment enumerated in the preceding section. [Civil Code, § 192, S. & C. 1003.]

When undertaking required.

SEC. 3. When the ground of the attachment is that the defendant is a foreign corporation, or a non-resident of this state, the order of attachment may be issued without an undertaking. In all other cases the order shall not be issued

by the clerk until there is executed in his office, by sufficient surety of the plaintiff, to be approved by the clerk, an undertaking, in a sum equal to double the amount of the plaintiff's claim, to the effect that the plaintiff shall pay the defendant all damages which he may sustain by reason of the attachment if the order be wrongfully obtained. [Civil Code, § 193, S. & C. 1004.]

Order of attachment—to whom directed, and its command.

SEC. 4. The order of attachment shall be directed and delivered to the sheriff; and it shall require him to attach the lands, tenements, goods, chattels, stocks, or interest in stocks, rights, credits, moneys, and effects of the defendant in his county, not exempt by law from being applied to the payment of plaintiff's claim, or so much thereof as will satisfy the plaintiff's claim, to be stated in the order as in the affidavit, and the probable costs of the action, not exceeding fifty dollars. [Civil Code, § 194, S. & C. 1004.]

Orders of attachment may issue to different counties.

SEC. 5. Orders of attachment may be issued to the sheriffs of different counties; and several of them may, at the option of the plaintiff, be issued at the same time, or in succession; but such only as have been executed shall be taxed in the costs, unless otherwise directed by the court. [Civil Code, § 195, S. & C. 1005.]

When returnable.

SEC. 6. The return-day of the order of attachment, when issued at the commencement of the action, shall be the same as that of the summons; and when issued afterward, it shall be twenty days after it issued. [Civil Code, § 196, S. & C. 1005.]

SUBDIVISION III. EXECUTION AND RETURN THEREOF.

When several orders issue, order of execution.

SEC. 7. When there are several orders of attachment against the same defendant, they shall be executed in the order in which they were received by the sheriff. [Civil Code, § 197, S. & C. 1005.]

How order executed.

SEC. 8. The sheriff shall execute the order of attachment without delay. He shall go to the place where the defendant's property is, and there, in the presence of two freeholders of the county, declare that, by virtue of the order, he attaches the property at the suit of the plaintiff; and the officer, with the freeholders, who shall be first sworn by the officer, shall make a true inventory and appraisement of all the property attached, which shall be signed by the officer and freeholders, and returned with the order. When the property attached is real property, the officer shall leave with the occupant thereof, or if there is no occupant, in a conspicuous place thereon, a copy of the order; and when it is personal property, and can be come at, he shall take it into his custody, and hold it subject to the order of the court. [Civil Code, § 198, S. & C. 1005.]

SEC. 9. The sheriff shall deliver the property attached to the person in whose possession it was found, upon the execution by such person, in the presence of the sheriff, of an

When property attached may be delivered to persons with whom found.

undertaking to the plaintiff, with sufficient surety, resident in the county, to the effect that the parties to the same are bound, in double the appraised value of the property, that the property, or its appraised value in money, shall be forthcoming to answer the judgment of the court in the action; but if it appear to the court that any part of such property has been lost or destroyed by unavoidable accident, the value thereof shall be remitted to the person so bound. [Civil Code, § 199, S. & C. 1005.]

Service of garnishee.

SEC. 10. When the plaintiff, his agent or attorney, makes oath in writing that he has good reason to, and does believe that any person or corporation in the affidavit named, has property of the defendant in his possession, describing the same, if the officer cannot get possession of such property, he shall leave with such garnishee a copy of the order of attachment, with a written notice that he appear in court and answer, as provided in section twenty-seven of this chapter. If the garnishee does not reside in the county in which the order of attachment was issued, the process may be served by the proper officer of the county in which the garnishee resides, or may be personally served. [Civil Code, § 200, 74 v. 160.]

Effect of service of process of garnishment upon public officer.

SEC. 11. The service of process of garnishment upon the sheriff, coroner, clerk, constable, master commissioner, marshal of a municipal corporation, or other officer having in his possession any money, claim, or other property of the defendant, or in which the defendant has an interest, shall bind the same from the time of such service, and shall be a legal excuse to such officers, to the extent of the demand of the plaintiff, for not paying such money or delivering such claim or property to the defendant, as by law, or the terms of the process in his hands, he would otherwise be bound to do. [Civil Code, § 200, 74 v. 160.]

When garnishee to answer and be examined.

SEC. 12. The answer of the garnishee shall be made before the clerk of the court of common pleas of the county in which he resides, or if he reside out of the state, before the clerk of the court of common pleas of the county where he was served, or where the action is pending. A special examination of the garnishee shall be had, and actions against him under section thirty-one of this chapter shall be brought in the county in which he resides. [Civil Code, § 200, 74 v. 160.]

Clerk to transmit answer to proper court.

SEC. 13. The clerk of the court of common pleas before whom the answer is made, shall transmit the same to the clerk of the court in which the suit is pending, in the same manner as depositions are required to be directed and transmitted, and shall receive for his services such fees as are allowed by law for taking depositions, and to clerks for furnishing certificates, with their seals of office attached; and if the garnishee admit an indebtedness to the defendant, and the court order the payment of the same, or any part thereof, to the plaintiff, and the garnishee fail to pay the

same according to such order, execution may issue thereon as upon judgments for the payment of money. [Civil Code, § 200, 74 v. 160.]

How garnishee served.

SEC. 14. The copy of the order and notice shall be served upon the garnishee as follows: If he is a person, they shall be served upon him personally, or left at his usual place of residence; if a corporation, they shall be left with the president, or other principal officer, or the secretary, cashier, or managing agent thereof; and if such corporation is a railroad company, such copy of the order and notice may be left with any regular ticket or freight agent thereof, in any county in which the railroad is located. [Civil Code, § 201, S. & S. 552.]

Different attachments may be made by the same officer.

SEC. 15. Different attachments of the same property may be made by the same officer; and one inventory and appraisement shall be sufficient, and it shall not be necessary to return the same with more than one order. [Civil Code, § 202, S. & C. 1006.]

How subsequent attachments made.

SEC. 16. When the property is under attachment, attachments on the same under subsequent orders shall be as follows:

1. If it is real property, it shall be attached in the manner prescribed in section eight of this chapter.

2. If it is personal property, it shall be attached as in the hands of the officer, and subject to any previous attachment.

3. If a person be made a garnishee more than once with respect to the same indebtedness or liability, a copy of the order and notice shall be left with him, in the manner prescribed in section ten of this chapter. [Civil Code, § 203, S. & C 1006.]

Form of return.

SEC. 17. The officer shall return upon every order of attachment what he has done under it. The return must show the property attached, and the time it was atttached. When garnishees are served, their names, and the time each was served, must be stated. The officer shall, also, return with the order all undertakings given under it. [Civil Code, § 204, S. & C. 1006.]

When property and garnishee bound.

SEC. 18. An order of attachment shall bind the property attached from the time of service; and the garnishee shall stand liable to the plaintiff in attachment for all property of the defendant in his hands, and money and credits due from him to the defendant, from the time he is served with the written notice mentioned in section ten of this chapter; but where property is attached in the hands of a consignee, his lien thereon shall not be affected by the attachment. [Civil Code, § 205, S. & C. 1006.]

SUBDIVISION IV. DISPOSITION OF ATTACHED PROPERTY.

Receiver may be appointed.

SEC. 19. The court, or a judge thereof in vacation, may, on the application of the plaintiff, and on good cause shown, appoint a receiver, who shall take an oath, and give an un-

dertaking, as is provided in other cases. [Civil Code, § 206, S. & C. 1007.]

Powers and duties of receiver.

SEC. 20. The receiver shall take possession of all notes, due-bills, books of account, accounts, and all other evidences of debt, that have been taken by the sheriff or other officer as the property of the defendant in attachment, and shall proceed to settle and collect the same. For that purpose he may commence and maintain actions in his own name, as such receiver; but in such actions no right of defense shall be impaired or affected. [Civil Code, § 207, S. & C. 1007.]

Notice of his appointment.

SEC. 21. The receiver shall forthwith give notice of his appointment to the persons indebted to the defendant in attachment. The notice shall be written or printed, and shall be served on the debtor by copy personally, or by copy left at his residence; and, from the date of such service, the debtors shall stand liable to the plaintiff in attachment for the amount of moneys and credits of the defendant in attachment in their hands, or due from them to him, and shall account therefor to the receiver. [Civil Code, § 208, S. & C. 1007.]

Report of receiver.

SEC. 22. The receiver shall, when required, report his proceedings to the court, and hold all money collected by him, and property which may come into his hands, subject to the order of the court. [Civil Code, § 209, S. & C. 1007.]

When sheriff to act as receiver.

SEC. 23. When a receiver is not appointed, the officer who attaches the property shall have all the powers, and perform all the duties, of a receiver appointed by the court or a judge, and may, if necessary, commence and maintain actions in his own name, as such officer. He may be required to give security other than his official undertaking. [Civil Code, § 210, S. & C. 1007.]

How attached property disposed of.

SEC. 24. The court, or a judge thereof in vacation, may make proper orders for the preservation of the property during the pendency of the suit, and may direct a sale of property when, because of its perishable nature, or the cost of keeping it, a sale will be for the benefit of the parties. The sale shall be public, after such advertisement as is prescribed for the sale of like property on execution, and shall be made in such manner, and upon such terms of credit, with security, as the court or judge, having regard to the probable duration of the action, may direct. The sheriff shall hold and pay over all proceeds of the sale collected by him, and all moneys received by him from garnishees, under the same requirement and responsibilities of himself and sureties as are provided in respect to money deposited in lieu of bail. [Civil Code, § 211, S. & C. 1007.]

SUBDIVISION V. PROCEEDINGS UPON ATTACHMENT.

SEC. 25. If the defendant, or other person on his behalf, at any time before judgment, cause an undertaking to be

executed to the plaintiff, by sufficient surety resident in the county, to be approved by the court, in double the amount of the plaintiff's claim as stated in his affidavit, to the effect that the defendant shall perform the judgment of the court, the attachment shall be discharged, and restitution made of any property taken under it, or the proceeds thereof. Such undertaking shall also discharge the liability of a garnishee in the action, for any property of the defendant in his hands. [Civil Code, § 212, S. & C. 1008.]

Attachment may be discharged by undertaking.

SEC. 26. The undertaking mentioned in the last section may, in vacation, be executed in the presence of the officer having the order of attachment in his hands, or, after the return of the order, before the clerk, with the same effect as if executed in court—the sureties, in either case, to be approved by the officer before whom the undertaking is executed. [Civil Code, § 213, S. & C. 1008.]

May be done in vacation.

SEC. 27. The garnishee shall appear as follows: If the order of attachment be returned during a term of court, and twenty days before the close thereof, he shall appear at that term; if the order be returned during vacation, he shall appear at the term next after its return. He shall appear and answer, under oath, all questions put to him touching the property of every description, and credits, of the defendant, in his possession, or under his control, and he shall disclose, truly, the amount owing by him to the defendant, whether due or not, and in the case of a corporation, any stock therein held by or for the benefit of the defendant, at or after the service of notice. [Civil Code, § 214, S. & C. 1008.]

Garnishee shall appear and make disclosure.

SEC. 28. A garnishee may pay the money owing to the defendant by him, to the officer having the order of attachment, or into court. He shall be discharged from liability to the defendant for any money so paid, not exceeding the plaintiff's claim. He shall not be subjected to costs beyond those caused by his resistance of the claim against him; and if he disclose the property in his hands, or the true amount owing by him, and deliver or pay the same according to the order of the court, he shall be allowed his costs. [Civil Code, § 215, S. & C. 1008.]

Garnishee may pay money into court, or to sheriff.

SEC. 29. If the garnishee fail to appear in court and answer, as required by section twenty-seven of this chapter, the court may proceed against him by attachment as for a contempt. [Civil Code, § 215, S. & C. 1008.]

Attachment of garnishee for contempt upon failure to answer.

SEC. 30. If the garnishee appear and answer, and it be discovered, on his examination, that at or after the service of the order of attachment and notice upon him, he was possessed of any property of the defendant, or was indebted to him, the court may order the delivery of such property, and the payment of the amount owing by him, into court; or the court may permit the garnishee to retain the property, or the amount owing, upon the execution of an undertaking to the plaintiff, by sufficient surety, to the effect that the

Disposition of property in hands of garnishee.

amount shall be paid, or the property forthcoming, as the court may direct. [Civil Code, § 217, S. & C. 1008.]

When plaintiff may have action against the garnishee.

SEC. 31. If the garnishee fail to appear and answer, or if he appear and answer, and his disclosure be not satisfactory to the plaintiff, or if he fail to comply with the order of the court to deliver the property and pay the money owing into court, or to give the undertaking required in the last section, the plaintiff may proceed against him by civil action; and thereupon such proceedings may be had as in other actions, and judgment may be rendered in favor of the plaintiff for the amount of property and credits of every kind of the defendant in possession of the garnishee, and for what may appear to be owing by him to the defendant, and for the costs of the proceedings against the garnishee. [Civil Code, § 218, S. & C. 1009.]

When plaintiff to pay costs and defendant may be substituted for plaintiff.

SEC. 32. If the plaintiff proceed against the garnishee by action, for the cause that his disclosure was unsatisfactory, unless it appear in the action that such disclosure was incomplete, he shall pay costs of such action. When the claim of the plaintiff in attachment is satisfied, the defendant may, on motion, be substituted as the plaintiff in the judgment. [Civil Code, § 218, S. & C. 1009.]

When judgment may be rendered against garnishee, and when he must be discharged.

SEC. 33. Final judgment shall not be rendered against the garnishee until the action against the defendant in attachment is determined; if in such action judgment be rendered for the defendant in attachment, the garnishee shall be discharged, and recover costs; and if the plaintiff recover against the defendant in attachment, and the garnishee deliver up all the property and credits of the defendant in his possession, and pay all the money due from him, as the court may order, the garnishee shall be discharged, and the costs of proceedings against him shall be paid out of the property and money so surrendered, or as the court deems right and proper. [Civil Code, § 219, S. & C. 1009.]

Effect of judgment for defendant.

SEC. 34. If judgment in the action be rendered for the defendant, the attachment shall be discharged, and the property attached, or its proceeds, shall be returned to him. [Civil Code, § 220, S. & C. 1009.]

Proceedings after judgment for plaintiff.

SEC. 35. If judgment be rendered for the plaintiff, it shall be satisfied as follows: So much of the property remaining in the hands of the officer, after applying the money arising from the sale of perishable property, and so much of the personal property, and lands and tenements, if any, whether held by legal or equitable title, as may be necessary to satisfy the judgment, shall be sold by order of the court, under the same restrictions and regulations as if the same had been levied on by execution; and the money arising therefrom, with the amount which may be recovered from the garnishee, shall be applied to satisfy the judgment and costs. If there be not enough to satisfy the same, the judgment shall stand, and execution may issue thereon for the residue, in all respects as in other cases. Any surplus

of the attached property, or its proceeds, shall be returned to the defendant. [Civil Code, § 221, S. & C. 1009.]

Court may enforce the delivery of property attached by proceedings as for contempt.

SEC. 36. The court may compel the delivery to the sheriff, for sale, of any of the attached property for which an undertaking has been given, and may proceed summarily on such undertaking to enforce the delivery of the property, or the payment of the money due upon the undertaking, by rules and attachment as in cases of contempt. [Civil Code, § 222, S. & C. 1010.]

May order sheriff to repossess himself of attached property.

SEC. 37. The court may order the officer to repossess himself, for the purpose of selling it, of any of the attached property which has passed out of his hands without having been sold or converted into money; and the officer shall, under such order, have the same power to take the property as he would have under an order of attachment. [Civil Code, § 223, S. & C. 1010.]

When property attached is claimed by a third person.

SEC. 38. If personal property which has been attached be claimed by any person other than the defendant, the officer shall have the validity of such claim tried; and such proceedings must be had thereon, with the like effect, as if the property had been seized upon execution, and claimed by a third person. [Civil Code, § 224, S. & C. 1010.]

When question of priority may be referred.

SEC. 39. When several attachments are executed on the same property, or the same person is made a garnishee by several parties, the court, on the motion of any of the plaintiffs, may order a reference, to ascertain and report the amounts and priorities of the several attachments. [Civil Code, § 225, S. & C. 1010.]

SUBDIVISION VI. GENERAL PROVISIONS.

Proceedings not to end by death of defendant.

SEC. 40. From the time of the issue of the order of attachment, the court shall be deemed to have acquired jurisdiction and to have control of all subsequent proceedings under this chapter; and if, after the issue of the order, the defendant, being a person, die, or being a corporation, its charter expire by limitation, forfeiture, or otherwise, the proceedings shall be carried on; but in all such cases other than where the defendant was a foreign corporation, the legal representatives of the defendant shall be made parties to the action. [Civil Code, § 226, S. & C. 1010.]

When plaintiff may be required to give further security.

SEC. 41. The defendant may, at any time before judgment, after reasonable notice to the plaintiff, move the court for additional security on the part of the plaintiff; and if, on such motion, the court is satisfied that the surety in the plaintiff's undertaking has removed from the state, or is not sufficient for the amount of the undertaking, it may vacate the order of attachment, and direct restitution of any property taken under it, unless, in a reasonable time, to be fixed by the court, sufficient security be given by the plaintiff. [Civil Code, § 227, S. & C. 1010.]

SEC. 42. The defendant may, at any time before judg-

Motion to discharge attachment.

ment, upon reasonable notice to the plaintiff, move to discharge an attachment, as to the whole or any of the property attached; the motion may be heard and decided by the court at any term or regular session thereof, or it may be made, heard, and decided by any judge thereof in vacation. [Civil Code, § 228, S. & C. 1011.]

Evidence on motion to discharge.

SEC. 43. When the motion is made upon affidavits on the part of the defendant, or papers and evidence in the case, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to the evidence on which the order of attachment was made. [Civil Code, § 229, S. & C. 1011.]

CHAPTER 3.

ATTACHMENT BEFORE DEBT DUE.

SECTION
1. Grounds of attachment before debt is due.
2. Who to grant same, and the affidavit.
3. Action to be dismissed if attachment be refused.
4. Order must specify amount.
5. Bond to be executed before order issues.
6. Action to be continued until the claim is due.
7. How far provisions of preceding chapter govern proceedings under this.

Grounds of attachment before debt is due.

SECTION 1. A creditor may bring an action on his claim before it is due, and have an attachment against the property of the debtor—

1. When a debtor has sold, conveyed, or otherwise disposed of his property, with the fraudulent intent to cheat or defraud his creditors, or to hinder or delay them in the collection of their debts; or,

2. Is about to make such sale, conveyance, or disposition of his property, with such fraudulent intent; or,

3. Is about to remove his property, or a material part thereof, with the intent, or to the effect of cheating or defrauding his creditors, or of hindering or delaying them in the collection of their debts. [Civil Code, § 230, S. & C. 1011.]

Who to grant same, and the affidavit.

SEC. 2. The attachment authorized by the last section may be granted by the court in which the action is brought, or by a judge thereof; but before such action shall be brought, or such attachment granted, the plaintiff, or his agent or attorney, shall make an oath, in writing, showing the nature and amount of the plaintiff's claim, that it is just, when it will become due, and the existence of any one of the grounds for attachment, enumerated in the last preceding section. [Civil Code, § 231, S. & C. 1011.]

Action to be dismissed if attachment be refused.

SEC. 3. If the court or judge refuse to grant an order of attachment, the action shall be dismissed, but without prejudice to a future action; and in all such actions application for an attachmont must be made. [Civil Code, § 232, S. & C. 1011.]

Order must specify amount.

SEC. 4. The order of the court or judge granting the attachment shall specify the amount for which it is allowed, not exceeding a sum sufficient to satisfy the plaintiff's claim and the probable costs of the action. [Civil Code, § 233, S. & C. 1012.]

Bond to be executed before order issues.

SEC. 5. The order of attachment, as granted by the court or judge, shall not be issued by the clerk until there is executed in his office such undertaking on the part of the plaintiff as is directed by section three of the preceding chapter. [Civil Code, § 234, S. & C. 1012.]

Action to be continued until the claim is due.

SEC. 6. The plaintiff in such action shall not have judgment on his claim before it becomes due; and the proceedings on attachment may be conducted without delay. [Civil Code, § 235, S. & C. 1012.]

How far provisions of preceding chapter govern proceedings under this.

SEC. 7. Proceedings authorized by the next preceding chapter shall govern attachments under this chapter, so far as the same are applicable. [Civil Code, § 236, S. & C. 1012.]

CHAPTER 4.

INJUNCTIONS.

SECTION
1. Injunction defined.
2. Causes for injunction.
3. When and by whom granted.
4. Notice of application.
5. When notice required.
6. Bond required.
7. The order, and its service.
8. Service of injunction allowed during litigation.
9. When injunction operates.
10. Second application for injunction.
11. How injunction or restraining order enforced, and disobedience punished.
12. Party enjoined may apply for further security.
13. Affidavits on hearing of application.
14. Motion to vacate or modify injunction.
15. Affidavits on motion.
16. Defendant may obtain injunction.

Injunction defined.

SECTION 1. The injunction provided by this title is a command to refrain from a particular act. It may be the final judgment in an action, or may be allowed as a provisional remedy; and when so allowed, it shall be by order. [Civil Code, § 237, S. & C. 1012.]

Causes for an injunction.

SEC. 2. When it appears by the petition that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of some act, the commission or continuance of which, during the litigation, would produce great or irreparable injury to the plaintiff, or when, during the litigation, it appears that the defendant is doing, or threatens or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights, respecting the subject of the action, and tending to render the judgment ineffectual, a temporary order may be granted restraining such act. It may also be granted in any case where it is specially authorized by statute. [Civil Code, § 238, S. & C. 1013.]

When and by whom granted.

SEC. 3. The injunction may be granted at the time of commencing the action, or at any time afterward, before judgment, by the supreme court, or a judge thereof, the court of common pleas, or a judge thereof, or, in the absence from the county of such judges, by the probate judge of the county, upon its appearing satisfactorily to the court or judge, by affidavit of the plaintiff, or his agent, that the plaintiff is entitled thereto. When the injunction has been allowed, and, during the pendency of the action in the court of common pleas, has been vacated either by a judge in vacation, or by the court previous to the trial of the action, and an appeal is taken, after such trial, from the judgment or final order of said court, to the district court, an injunction may be granted, at any time before judgment or final order in the action in the district court, by a judge of the supreme court, or the district court in which such action is pending, or a judge of any court of common pleas in the district where the action is pending, upon its appearing satisfactorily to the court or judge, by affidavit of the party, or his agent, that the party is entitled thereto. [Civil Code, § 239, S. & C. 1015.]

Notice of application.

SEC. 4. If, in the opinion of the court or judge, the defendant, or any party to the suit, should be heard before granting the injunction, a reasonable notice may be required to be given to such party of the time, place, and purpose of the application; and such party may, in the meantime, be restrained. [Civil Code, § 240, S. & C. 1015.]

When notice required.

SEC. 5. An injunction shall not be granted against a party who has answered, except upon notice; but such party may be restrained until the decision of the application for an injunction. [Civil Code, § 241, S & C. 1016.]

Bond required.

SEC. 6. No injunction, unless otherwise provided by special statute, shall operate until the party obtaining the same gives an undertaking, executed by sufficient surety, to be approved by the clerk of the court granting the injunction, in an amount to be fixed by the court or judge allowing the same, to be secured by the party enjoined the damages he may sustain if it be finally decided that the injunction ought not to have been granted. [Civil Code, § 242, S. & C. 1016.]

The order, and its service.

SEC. 7. The order of injunction shall be addressed to the party enjoined, shall state the injunction, and shall be issued by the clerk. When the injunction is allowed at the commencement of the action, the clerk shall indorse upon the summons "injunction allowed," and it shall not be necessary to issue the order of injunction; nor shall it be necessary to issue the same when notice of the application therefor has been given to the party enjoined. The service of the summons so indorsed, or the notice of the application for an injunction, shall be notice of its allowance. [Civil Code, § 243, S. & C. 1017.]

SEC. 8. When the injunction is allowed during the liti-

gation, and without notice of the application therefor, the order of injunction shall be issued, and the sheriff shall forthwith serve the same upon each party enjoined, in the manner prescribed for serving a summons, and make return thereof without delay. [Civil Code, § 244, S. & C. 1017.]

Service of injunction allowed during litigation.

SEC. 9. An injunction shall bind the party from the time he has notice thereof, and the undertaking required by the applicant therefor is executed. [Civil Code, § 245, S. & C. 1017.]

When injunction operates.

SEC. 10. No injunction shall be granted by a judge after a motion therefor has been overruled on the merits of the application by his court; and when it has been refused by the court in which the action is brought, or a judge thereof, it shall not be granted to the same applicant by a court of inferior jurisdiction, or any judge thereof. [Civil Code, § 246, S. & C. 1018.]

Second application for injunction.

SEC. 11. An injunction or restraining order granted by a judge may be enforced as the act of the court. Disobedience of an injunction or restraining order may be punished by the court, or any judge who might have granted it in vacation, as a contempt. An attachment may be issued by the court or judge, upon being satisfied, by affidavit, of the breach of the injunction or restraining order, against the party guilty of the same; and such party may be required by the court or judge to pay a fine not exceeding two hundred dollars, for the use of the county, to make immediate restitution to the party injured, and to give further security to obey the injunction or restraining order; or, in default thereof, he may be committed to close custody until he complies with such requirement, or is otherwise legally discharged. [Civil Code, § 247, 72 v. 50.]

How injunction or restraining order enforced, and disobedience punished.

SEC. 12. A party enjoined may, at any time before judgment, upon reasonable notice to the party who obtained the injunction, move the court for additional security; and if it appear that the surety in the undertaking has removed from the state, or is insufficient, the court may vacate the injunction, unless, in a reasonable time, sufficient security be given. [Civil Code, § 248, S. & C. 1018.]

Party enjoined may apply for further security.

SEC. 13. On the hearing of an application for an injunction, each party may read affidavits. All affidavits shall be filed. [Civil Code, § 249, S. & C. 1018.]

Affidavits on hearing of application.

SEC. 14. When an injunction has been granted, a party may, at any time before the trial, apply to the court in which the action is pending, or a judge thereof, or to the supreme court, or a judge thereof, to vacate or modify the same. The party applying for such vacation or modification shall give to the adverse party such notice of the time and place at which the motion will be heard, as the court or judge may deem reasonable. The application may be made upon the petition and affidavits upon which the injunction was

Motion to vacate or modify injunction.

granted, or upon affidavits on the part of the party enjoined, with or without answer. [Civil Code, § 250, S. & C. 1018.]

Affidavits on motion.

SEC. 15. When the application is made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits, or other evidence, in addition to the evidence on which the injunction was granted. [Civil Code, § 251, S. & C. 1018.]

Defendant may obtain an injunction.

SEC. 16. A defendant may obtain an injunction upon an answer in the nature of a counterclaim. He shall proceed in the manner prescribed in this chapter. [Civil Code, § 252, S. & C. 1018.]

CHAPTER 5.

RECEIVERSHIP, AND OTHER PROVISIONAL REMEDIES.

SECTION
1. When receiver appointed.
2. Who ineligible as receiver.
3. Oath and undertaking by receiver.
4. Powers of receiver.
5. Investment of funds by receiver.
6. Disposition of property in hands of trustees.
7. How certain orders of court may be enforced.

When receiver appointed.

SECTION 1. A receiver may be appointed by the supreme court, the district court, the court of common pleas, or by a judge of either, or, in the absence of said judges from the county, by the probate judge of the county, in the following cases:

1. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured.

2. In an action by a mortgagee, for the foreclosure of his mortgage, and sale of the mortgaged property, where it appears that the mortgaged property is in danger of being lost, removed, or materially injured, or that the condition of the mortgage has not been performed, and the property is probably insufficient to discharge the mortgage debt.

3. After judgment, to carry the judgment into effect.

4. After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or when an execution has been returned unsatisfied, and the judgment debtor refuses to apply the property in satisfaction of the judgment.

5. In the cases provided in this title, and by special statutes, when a corporation has been dissolved, or is insol-

vent, or in imminent danger of insolvency, or has forfeited its corporate rights.

6. In all other cases where receivers have heretofore been appointed by the usages of courts of equity. [Civil Code, § 253, S. & C., 1018]

Who ineligible as receiver.

SEC. 2. No party, attorney, or person, interested in an action, shall be appointed receiver therein, except by consent of the parties. [Civil Code, § 254, S. & C. 1019.]

Oath and undertaking by receiver.

SEC. 3. The receiver, before entering upon his duties, must be sworn to perform them faithfully, and, with surety approved by the court, judge, or clerk, execute an undertaking to such person, and in such sum, as the court or judge shall direct, to the effect that he will faithfully discharge the duties of receiver in the action, and obey the orders of the court therein. [Civil Code, § 255, S. & C. 1019.]

Powers of receiver.

SEC. 4. The receiver shall have, under the control of the court, power to bring and defend actions in his own name, as receiver, to take and keep possession of the property, to receive rents, collect, compound for, and compromise demands, make transfers, and generally to do such acts respecting the property as the court may authorize. [Civil Code, § 256, S. & C. 1019.]

Investment of funds by receiver.

SEC. 5. Funds in the hands of a receiver may be invested upon interest, by order of the court; but no such order shall be made except upon the consent of all the parties to the action. [Civil Code, § 257, S. & C. 1019.]

Disposition of property in hands of trustee.

SEC. 6. When it is admitted by the pleading or on the examination of a party, that he has in his possession, or under his control, any money or other thing capable of delivery, which being the subject of the litigation, is held by him as trustee for another party, or which belongs or is due to another party, the court may order the same to be deposited in court, or delivered to such party, with or without security, subject to the further direction of the court. [Civil Code, § 258, S. & C. 1019.]

How certain orders of court may be enforced.

SEC. 7. Whenever, in the exercise of its authority, a court orders the deposit or delivery of money or other thing, and the order is disobeyed, the court, besides punishing the disobedience as for a contempt, may make an order requiring the sheriff to take the money or thing, and deposit or deliver it in conformity with the direction of the court. [Civil Code, § 259, S. & C. 1019.]

DIVISION VII. SPECIAL PROCEEDINGS.

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CHAPTER 2. APPROPRIATION OF PROPERTY.
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CHAPTER 1.

AMERCEMENT.

SECTION
1. Causes for which sheriff or other officer may be amerced.
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4. Clerks may be amerced for not paying over money.
5. Amount of amercement for not paying over money.
6. Surety of officer may be made party to judgment.
7. Officer may have execution on original judgment.

Causes for which sheriff or other officer may be amerced.

SECTION 1. If an execution or order of sale, directed to an officer, come to his hands to be executed, and he neglect or refuse to execute it; or if he neglect or refuse to sell property of any kind which, by any writ or order he is directed to sell; or fail to call an inquest, or return to the clerk's office a copy of the certificate of appraisement made by the inquest; or neglect to return to the proper court an execution or order of sale to him directed, on or before the return-day thereof; or neglect to return a correct inventory of personal property taken on execution, unless he return that the amount of the judgment, including costs, has been paid to him; or neglect, on demand, to pay to the person entitled thereto, any money by him collected or received for the use of such person, at

any time after he collects or receives the same; or neglect or refuse, on demand, to pay to the judgment debtor all money by him received on any sale made, beyond what is sufficient to satisfy the writ or order of sale, with interest and costs, such officer shall, on motion in court, and notice thereof, in writing, as provided in the next section, be amerced in the amount of such judgment, including costs, with ten per cent. thereon, to and for the use of such plaintiff or defendant, as the case may be. [Civil Code, § 451, S. & C. 1084.]

Two day's notice to be given officer; amount of amercement.

SEC. 2. If the officer resides in the county in which the motion is made, the notice shall be served upon him at least two days before the motion is heard; but if he is an officer of another county, the notice shall be served upon him, or left at his office, at least fifteen days before the first day of the term at which the motion will be heard, or sent to him by mail at least sixty days before the first day of such term. [Civil Code, §§ 451, 455, S. & C. 1084, S. & S. 565.]

Notice of motion for amercement.

SEC. 3. If an officer fail to execute any summons, order, execution, or other process, directed to him, or to return the same, as required by law, unless he make it appear, to the satisfaction of the court, that he was prevented by unavoidable accident from so doing, he shall be amerced, upon motion and notice, as provided in section one, in a sum not exceeding one thousand dollars, and be liable to the action of any person aggrieved by such failure; but he shall not be liable to an action or amercement for a failure to execute any such process directed to him from any county other than that in which he was elected, unless his fees are deposited with the clerk who issued the process, and an indorsement of that fact is made and subscribed by such clerk on the process, at the time of its issue, in these words: "Funds are deposited to pay the sheriff on this process." [Civil Code, § 592, S. & S. 572.]

Amercement for not serving or returning process.

SEC. 4. If a clerk of a court neglect or refuse, on demand, to pay to the person entitled thereto, any money by him received in his official capacity for the use of such person, he may be amerced, on motion and notice, as provided in section one. [Civil Code, § 452, S. & C. 1085.]

Clerks may be amerced for not paying over money.

SEC. 5. When the cause of amercement is the refusal to pay over money collected, the officer shall not be amerced in a greater sum than the amount withheld, with ten per cent. thereon. [Civil Code, § 453, S. & C 1085.]

Amount of amercement for not paying over money.

SEC. 6. A surety of an officer may be made party to the judgment rendered as aforesaid against such officer, by action, but the goods and chattels, lands and tenements, of such surety, shall not be liable to execution when sufficient goods and chattels, lands and tenements, of the officer against whom execution is issued, can be found to satisfy the execution; and either party may proceed against the officer by attachment. [Civil Code, § 456, S. & C. 1086.]

Surety of officer may be made party to judgment.

SEC. 7. If an officer who is amerced has not collected the

Officer may have execution on original judgment.

amount of the original judgment, he shall be permitted to sue out an execution, and collect, for his own use, the amount of the judgment in the name of the original plaintiff. [Civil Code, § 457, S. & C. 1086.]

CHAPTER 2.

APPROPRIATION OF PROPERTY.

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4. In what county petition to be filed.
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7. Jurisdictional questions to be first determined.
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11. Time of trial, adjournments, and discharge of juries.
12. How panel to be filled; jurors to be interrogated by court.
13. Challenges to jurors, and how vacancies in jury filled.
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16. Judge must deliver certain copies to sheriff.
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SECTION
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38. Fees of witnesses, officers, and probate judge, and how costs adjudged.
39. When costs may be apportioned.
40. When this chapter does not apply.

Appropriations to be made as provided in this chapter.

SECTION 1. Appropriations of private property by corporations must be made according to the provisions of this chapter. [69 v. 88, § 1.]

SEC. 2 Appropriations can only be made when the corporation is unable to agree with the owner, or his guardian or trustee, as to the compensation to be paid for the property

sought to be appropriated, or when the owner is incapable of contracting in person or by agent, and has no guardian or trustee, or is unknown. or his residence is beyond the state, or unknown. [69 v. 88, § 2.]

When appropriations can be made.

SEC. 3. In any such case the corporation may file with the probate judge a petition, verified as in a civil action, containing a specific description of each parcel of property, interest, or right, within the county, sought to be appropriated, the work, if any, intended to be constructed thereon, the use to which the same is to be applied, the necessity for the appropriation, the name of the owner of each parcel, if known, or if not known, a statement of that fact, the names of all persons having or claiming an interest, legal or equitable, in the property, so far as the same can be ascertained, and a prayer for the appropriation of the property. [69 v. 88, §§ 2, 19.]

Petition for appropriation, and in what court to be filed.

SEC. 4. The petition may include one or more of the parcels of property, rights, or interests in the county in which it is filed; and when any such parcel, right, or interest is situated in two or more counties, the petition may be filed in either of the counties in which an owner is resident, and if no owner is resident therein, it may be filed in either. [72 v. 71, § 1.]

In what county petition to be filed.

SEC. 5. Upon the filing of a precipe therefor, the probate judge shall issue summons for the owners, and persons named in the petition as residents of the state and having an interest, which may be directed to the sheriff of any county, and shall command him to notify the persons named therein of the filing of the petition, and to appear thereto at a time to be fixed by the judge, and named therein, not less than five nor more than fifteen days from the date thereof, and which shall be served and returned as in a civil action. When a writ is returned "not summoned," other writs may be issued, until the parties are duly summoned. [72 v. 71, § 1.]

Summons—its command and service thereof.

SEC. 6. When a person having an interest is unknown, or his residence is beyond the state, or unknown, the corporation may make service by publication against him, by publishing in a newspaper of general circulation in the county where the petition is filed, for four consecutive weeks, a notice containing a summary statement of the object and prayer of the petition, so far as it relates to the property of the person thus to be notified, the court in which it is filed, and the time when such person is to appear thereto, not less than ten nor more than twenty days after the last publication; and the fact of publication may be proved by the affidavit of any person knowing the same. [72 v. 71, § 1.]

Service by publication.

SEC. 7. On the day named in any summons first served, or publication first completed, the probate judge shall hear and determine the questions of the existence of the corporation, its right to make the appropriation, its inability to agree with the owner, and the necessity for the appropriation. Upon these questions the burden of proof shall be

Jurisdictional questions to be first determined.

upon the corporation, and any interested person shall be heard. [72 v. 71, § 1.]

Jurors to be drawn from the box, and venire issued.

SEC. 8. If the judge determine these questions for the corporation, as to any or all of the property, and persons interested therein, he shall issue an order to the clerk and sheriff to draw sixteen names from the jury box, as in other cases, and within two days after the receipt of the same, they shall execute the order, and the clerk shall forthwith return it to the probate judge, with a list of the names drawn indorsed thereon; and the judge shall issue to the sheriff a venire for the jurors so drawn to attend at his office, at a time to be fixed by him, and named in the writ, not exceeding ten days from the date thereof, which shall be served and returned as in other cases. [72 v. 71, §§ 3, 4.]

Who entitled to a separate trial, and how trial conducted.

SEC. 9. The owners of each separate parcel, right, or interest, shall be entitled to a separate trial by jury, verdict, and judgment. They shall hold the affirmative on the trial, which shall be conducted, and evidence shall be admitted, and bills of exception may be taken, as provided in civil actions. [69 v. 88, §§ 8, 12, 23; 72 v. 71, §§ 1, 3.]

The court may allow any amendment.

SEC. 10. The court may amend any defect or informality in any of the proceedings authorized or required by this chapter, or cause new parties to be added, and direct such further notice to be given to any party in interest as it deems proper. [69 v. 88, § 17.]

Time of trial, adjournments, and discharge of juries.

SEC. 11. The court may direct the order and fix the time of the several trials; may adjourn or continue any trial for the purpose of obtaining proper service upon any property owner, or when deemed necessary for the proper and convenient trial of the several cases; and may discharge any jury, and cause other juries to be impaneled, as provided in this chapter. [72 v. 72, § 3.]

How panel to be filled; jurors to be interrogated by court.

SEC. 12. When, by reason of non-attendance, sickness, or other cause, any of the sixteen persons are not present and in condition to serve as jurors, the judge shall order the sheriff to fill the vacancies with talesmen; and when the list of sixteen is full, the judge shall call upon each separately, beginning with the first named on the list, to take his place in the jury box, and shall personally inquire of each, as called, whether he is interested in any way in any of the property, rights, or interests sought to be appropriated, or in the corporation which filed the petition, either as owner, stockholder, agent, attorney, or otherwise; and if such person answer in the affirmative, or if it be shown to the judge, by satisfactory evidence, that he is so interested, he shall be excused from serving on the jury, and the next person on the list shall be called, and interrogated in like manner; and if the list of sixteen be exhausted before a proper jury of twelve men is taken and accepted therefrom, the judge shall order the sheriff to fill the remaining vacancies in the jury box required to make up the

number of twelve, with talesmen, who shall be interrogated as herein above provided. [72 v. 73, § 4.]

Challenges to jurors, and how vacancies in jury box filled.

SEC. 13. When the jury box is filled with twelve disinterested jurors, the owners of the property which is the subject of the trial, jointly, and the petitioner, shall each have the right to two peremptory challenges, and to challenge for cause; and all vacancies arising in the jury from challenge, or otherwise, shall be filled by talesmen having the qualifications prescribed in the last section, to be ascertained as therein provided. [72 v. 73, § 4.]

The oath to be administered to jury.

SEC. 14. When the jury is filled, the probate judge shall administer to them the following oath: "You, and each of you, do solemnly swear that you will justly and impartially assess, according to your best judgment, the amount of compensation due to the proper owners in the cases which will be brought before you in this proceeding, by reason of the appropriation of their property described in the petition, to the use of [here name the corporation], in the proceeding now pending, irrespective of any benefit from any improvement proposed by such corporation; and you do further swear that you will, in assessing any damages that may occur to such property owners, by reason of the appropriation, other than the compensation, further ascertain how much less valuable the remaining portion of said property will be in consequence of such appropriation; this you swear as you shall answer to God." [72 v. 73, § 5.]

The form of writ to sheriff.

SEC. 15. The probate judge may, upon motion of either party, issue the following writ to the sheriff, to wit: "*To the sheriff of county*: You are hereby commanded to conduct the twelve jurors named in the panel to this writ annexed, to view the property or premises sought to be appropriated by [here state the name of the corporation], and owned by [here state the name of the owner or owners], on , the day of , then and there to view the premises or property aforesaid, in the presence of A. B. on the part of the corporation aforesaid, and C. D. on the part of the owner, appointed by this court, and you shall make return of the manner you have executed this writ to this court, on the day of A.D. ." The writ shall be signed by the probate judge, and certified under his seal of office. [69 v. 88, § 9.]

Judge must deliver certain copies to sheriff.

SEC. 16. The judge shall also deliver to the sheriff a copy of that part of the petition containing a separate description of each parcel of property, and rights or interests sought to be appropriated within the county, which the jury is required to view; he may appoint, to be present at the view, the two persons named in the writ; and the sheriff who is to execute the writ shall, by a special return upon the same, certify under his hand that the view has been made according to the command thereof. The expenses of taking the view shall be taxed in the bill of costs, and no evidence shall be given on either side at the taking thereof. [69 v. 88, § 9.]

Witnesses may be examined before jury.

SEC. 17. Witnesses may be examined before the jury after its return to the court; but if more than three witnesses be examined by either party, on the same point in the same case, the judge may tax the costs of such additional witnesses to the party calling them. [69 v. 88, § 9]

When a structure is partly on land sought to be appropriated.

SEC. 18. When a building or other structure is situated partly upon land sought to be appropriated, and partly upon adjoining land, and such structure cannot be divided upon the line between such two tracts of land without manifest injury, the jury, in assessing the compensation to any owner of the lands, shall assess the value of the same exclusive of the structure, and make a separate estimate of the value of the structure; the owner of the structure may elect to retain the ownership of the same, and to remove it, or accept the value thereof as estimated by the jury; if he fail to make such election within ten days from the date of the report of the jury, or within ten days from the termination of the cause in any higher court to which it may be taken, he shall be deemed to have elected to retain and remove the structure; but if he elect to accept the value of the structure, the title thereto shall vest in the corporation making the appropriation, which shall have the right to enter upon the land for the purpose of removing the structure therefrom. [73 v. 210, § 1.]

Verdict, and confirmation thereof.

SEC. 19. The jury shall render its verdict in writing, signed by the foreman, to the judge, who shall cause it to be entered of record; and unless for good cause shown, upon motion to be filed within ten days after the verdict is rendered, a new trial be granted, the judge shall enter a judgment confirming such verdict. [72 v. 71, § 10]

When and how corporation may have possession.

SEC. 20. Upon payment to the party entitled thereto, or deposit with the probate judge, of the amount of the verdict, and such costs as have lawfully accrued in the case up to the time against the corporation, the corporation shall be entitled to take possession of, and shall hold, the property, rights, or interests so appropriated, for the uses and purposes for which the appropriation was sought, as set forth in the petition, and the judge shall enter of record an order to that effect, and if necessary, proper process shall be issued to place the corporation in possession thereof. [72 v. 71, § 10]

When and how corporation may abandon proceeding.

SEC. 21. The corporation may abandon any case or proceeding after paying into court the amount of the defendant's costs, expenses, and attorney fees, as found by the court. If the corporation fail in any case to make payment or deposit, as provided in the preceding section, within thirty days after confirmation of the verdict, the probate judge, on motion of the party entitled to such payment, to be filed within ten days after the expiration of said thirty days, shall enter an order directing the corporation to make such payment or deposit within thirty days after the date of such order; and unless such corporation, within said thirty days, make such payment or deposit, it shall be held and consid-

ered to have thereby abandoned the property, rights, or interests so appropriated, and all claims thereon under its proceeding, and the judge shall issue an order to that effect; the judge shall also enter a judgment against the corporation, and in favor of the party entitled to such payment, for such amount of expenses, including time spent, and attorney fees, incurred by him in the proceeding, as the court, upon the evidence offered in that behalf, deems just and reasonable, for which execution may be issued against the corporation; and the directors of the corporation, individually, shall be liable upon such judgment, and may be made parties thereto by action. [72 v. 71, § 10.]

When action may be brought for costs and expenses.

SEC. 22. If such judgment be not satisfied within thirty days after the rendition thereof, or if the party entitled thereto be not satisfied with the amount thereof, such party shall have a right of action against the petitioner for his expenses aforesaid, including time spent, and attorney fees, and also for his expenses, including reasonable attorney fees, incurred in prosecuting such action; but the action shall be brought within six months after the rendition of the judgment in the probate court. [72 v. 71, § 10.]

New trial, proceedings thereon.

SEC. 23. A new trial shall be granted for cause only, shall take place in the same court where the first trial was had, and shall be conducted in accordance with the provisions of this chapter for the first trial, so far as they are applicable; and upon the granting of the motion for a new trial, if the amount of the first verdict has been paid into court, the probate judge shall retain the same until the final termination of the second trial; but if, upon the new trial, the verdict of the jury exceed the amount of the first verdict, the corporation shall pay the amount of the first verdict, together with the excess, to the owner of the property; and if the verdict upon the second trial be less than that of the first, the probate judge shall repay to the corporation the difference. If a new trial be granted at the instance of the owner of the property, and the verdict of the jury be the same or less in amount than that first rendered, the owner shall pay the whole costs of the second trial; and if it be more than that first rendered, the costs of the second trial shall be paid by the corporation. [69 v. 88, § 11.]

Either party may file a petition in error,

SEC. 24. Either party may file a petition in error in the court of common pleas of the proper county, within thirty days from the rendition of the final judgment in the probate court, and the proceeeings in error shall be conducted as in civil actions; but the corporation may, on the rendition of the final judgment in the probate court, pay into said court the amount of the judgment for compensation and costs therein rendered, and proceed to enter upon and appropriate the property, notwithstanding the pendency of the proceedings in error. [69 v. 88, § 12.]

SEC. 25. If the court of common pleas, upon the hearing of the cause, affirm the judgment of the probate court, all

Proceedings in the common pleas on error.

the costs in the court of common pleas shall be paid by the plaintiff in error; and if it reverse such judgment, it shall retain the cause for trial and final judgment, as in other cases, which trial shall be had at the term of reversal of the judgment, unless for good cause shown by either party the court grant a continuance; and on the trial of the cause in the court of common pleas, the same inquiry shall be made as to the interest of the jurors, and the same oath shall be administered to the jury, as is provided for in sections twelve and fourteen of this chapter. [69 v. 88, § 13]

How school land may be appropriated.

SEC. 26. When a railroad company, incorporated in this state, has located its railroad through any part of reserved sections twenty-nine or sixteen, or through any part of sections granted by congress in lieu of section sixteen, for school purposes, and such lands remain unsold, or through any town lot or parcel of ground used for or devoted to school purposes, it may appropriate so much of such land or lots as may be necessary for the purposes aforesaid; and service of the summons made on such trustees or school officers as have possession or control of the lands, shall have the same force and effect as service in any other case on owners of land sought to be appropriated. The money arising from such appropriation shall be disposed of by such trustees or school officers in accordance with law. [69 v. 88, § 14]

When probate judge is interested.

SEC. 27. When the probate judge is interested, either as stockholder, director, or otherwise, in a corporation seeking to appropriate private property to its use, the proceedings authorized by this chapter may be commenced in the court of common pleas of the county; and in that case the proceedings shall conform in all respects, so far as applicable, to the provisions of this chapter, and all the powers conferred and duties imposed thereby upon the probate court shall devolve upon the court of common pleas; and said court may make such orders, and direct such proceedings to be had, as may be necessary to do full justice between the parties, according to the true spirit and intent of this chapter; and after final judgment the corporation may, on depositing the amount of the judgment and costs assessed in said court, with the clerk thereof, be entitled to enter into possession of the property sought to be appropriated. [69 v. 83, § 15.]

Court to appoint attorney for party absent or under disability.

SEC. 28. When a party in interest is unknown, or his residence is unknown, and when service has been made by publication, and the party has not appeared in the proceedings by agent or attorney, or when such party in interest is under any legal disability, and has no legal guardian or trustee within the county where the action is brought, the court shall appoint some competent attorney to attend upon the proceedings, and protect the rights and interests of such party; and the court shall fix the amount of the fees of the attorney for such service, which shall be payable out of any money paid on the judgment rendered in such case for property appropriated. [69 v. 88, § 16.]

Conflicting claims not to be passed upon.

SEC. 29. When there are diverse or conflicting claims, legal or equitable, to the real estate, or any interest therein, sought to be appropriated under the provisions of this chapter, the jury or court shall not pass upon the same in the proceedings for appropriation, but such claims shall be reserved for adjudication as hereinafter provided. [69 v. 88, § 18.]

But to be adjudicated in the common pleas.

SEC. 30. Upon the payment of the money into court by the corporation, a party claiming a legal or equitable interest in the property, or the money arising therefrom by such appropriation, may file his petition in the court of common pleas of the proper county, making the other claimants to the property or money parties thereto, setting forth the facts on which the claim is founded, the fact of the appropriation of the property, the amount of money so paid in therefor, and such other facts as are proper to enable the court to hear and determine the matter between the claimants; and the court shall forthwith appoint some master of the court, or other suitable person selected by the parties, to hold and safely keep such fund, or invest the same in the manner the court shall direct, after hearing the parties; and such fund shall thenceforth represent the land, and the interests therein, and be subject to the control of the court having jurisdiction of the case, by orders entered in the action, according to the rights of the parties to the land or fund, as from time to time the court may determine. [69 v. 88, § 19.]

Such proceeding a civil action.

SEC. 31. Such proceeding in the court of common pleas, shall be considered and held to be a civil action; and the conflicting claims of parties to the fund aforesaid shall be determined by the court, or by a jury trial, according as the claim is equitable or legal, in the same manner as if the land had not been converted into money. [69 v. 88, § 20.]

Unfinished road-bed of railroad may be condemned.

SEC. 32. A railroad corporation of this state may condemn and appropriate to its own use the interest and easement in, and quiet title to, any unfinished road-bed, or part thereof, on the line of its proposed road, owned or claimed by any other company or companies, when it has remained substantially in the same unfinished condition, and without having the ties and iron placed thereon, for the period of ten years or more. Every such company shall be made a party defendant to the condemnation proceedings, and shall file an answer therein, setting forth fully its title to and interest in such road-bed, or part thereof, sought to be appropriated, if any it claim, to which answer the plaintiff shall plead issuably, unless it admit the validity of the defendant's claim. [72 v. 71, § 9.]

Proceedings in such case.

SEC. 33. When it is determined by the court, upon issue of law, or by the jury upon issue of fact, or by the admission of the pleadings, or by reason of failure to plead that any such company asserting such ownership or claim is not entitled thereto, judgment, including costs, shall be rendered accordingly; but when it in like manner is determined that

any such company has an interest in such road-bed, or part thereof, so sought to be appropriated, the jury shall determine and state the amount of compensation due to such company, according to law, on account of the appropriation of such interest. [72 v. 71, § 9.]

In what courts such proceedings may be commenced.

SEC. 34. Proceedings under the last two sections may be commenced in the court of common pleas, or superior court, of the proper county; the case shall, on motion, be taken out of its order by the court, or by any appellate or reviewing court, and determined without unnecessary delay; and proceedings in error to such common pleas or superior court may be commenced directly in the supreme court; but the provisions of this chapter as to viewers shall not apply to appropriations authorized by said sections. [72 v. 71, § 9.]

When the land-owner may institute proceedings to condemn.

SEC. 35. When a corporation authorized by law to make appropriation of private property has taken possession of, and is occupying or using, the land of any person for any purpose, and the land so occupied or used has not been appropriated and paid for by the corporation, or is not held by any agreement in writing with the owner thereof, the owner or owners, or either of them, may serve notice in writing upon the corporation, in the manner provided for the service of a summons against a corporation, to proceed under this chapter to appropriate the land; and on failure of such corporation, for ten days, so to proceed, the owner or owners may file a petition in the probate court of the proper county, setting forth the fact of such use or occupation by the corporation, that the corporation has no right, legal or equitable, thereto, that the notice provided in this section has been duly served, that the time of limitation under the notice has elapsed, and such other facts, including a pertinent description of the land so used or occupied, as may be proper to a full understanding of the facts. [69 v. 88, § 21.]

Summons in such case, judgment, and execution.

SEC. 36. A summons shall issue, and be served upon the corporation, and thereafter the proceedings in said court shall be conducted to final judgment, in all respects, as provided in this chapter: and if the corporation fail to pay the judgment and costs awarded against it in the proceeding, the same may be collected by execution as in other cases; but this section shall not be construed to impair or lessen, in any manner, the right the owner or owners may have to proceed against the corporation as in all other cases of the unlawful entry upon lands. [69 v. 88 § 21.]

When injunction may issue against corporation.

SEC. 37. If execution issued as provided in the last section be returned unsatisfied, in whole or in part, with the indorsement that no goods or chattels, lands or tenements, can be found whereon to levy, or if the judgment remain unsatisfied for more than sixty days from the rendition thereof, the court may, by injunction, restrain the corporation from using or occupying the lands until the judgment and costs are fully paid. [69 v. 88, § 22.]

SEC. 38. The jurors summoned, and attending or serving,

Fees of witnesses, officers, and probate judge, and how costs adjudged.

in accordance with the provisions of this chapter, shall each receive the same fees per day as are provided by law for jurors in the court of common pleas, and also five cents per mile for each mile of the distance they are compelled to travel in the discharge of their duties; the witnesses shall be allowed the same fees and mileage as are allowed for attendance at the court of common pleas; the sheriff shall be entitled to such fees as he is allowed by law for similar services in other cases, but he shall not be allowed anything in the way of poundage, except on money made on execution; the clerk shall be entitled to a fee of one dollar and fifty cents for drawing, and certifying to the probate judge, the list of jurors; the probate judge shall be allowed to enter a charge of five dollars in the cost-bill for each day occupied in the trial of a cause, in addition to his other fees provided by law; and the whole costs so taxed shall be adjudged against and paid by the corporation, except as provided in the next section. [69 v. 88, § 24.]

When costs may be apportioned.

SEC. 39. A corporation, by its proper officer, agent, or attorney, may, at the time of filing the petition with the probate judge, deposit with such judge such sum of money, for each separate parcel of property as it deems a just and equitable compensation for the property, rights, and interests described in the petition, and sought to be appropriated; and when the final verdict of the jury as to any parcel of property does not exceed the amount so deposited, and the owner has refused, after notice of such deposit, to accept the same, the whole costs of the proceeding as to such parcel shall be equally divided between the corporation and the owner or owners of the property; and when the final verdict as to any parcel or parcels exceeds, [and] as to other parcel or parcels does not exceed, the amount deposited, the probate judge shall apportion the costs in such manner as he may deem equitable and just. [69 v. 88, § 24.]

When this chapter does not apply.

SEC. 40. The provision of this chapter shall not apply to proceedings by state, county, township, district, or municipal authorities, to appropriate private property for public uses, or for roads or ditches; and in all such cases it shall be optional with such authorities to pay the judgment rendered against them according to section nineteen hereof, or to pay the costs and decline to take the property sought to be appropriated. [69 v. 88, § 24.]

CHAPTER 3.

ARBITRATION.

SECTION
1. Arbitration of controversies; submission may be made a a rule of court.
2. Parties to arbitration may enter into bonds; what to be set forth in bonds.
3. Time and place of hearing to be specified in bonds.
4. How process obtained.
5. Disobedience of process, etc., a contempt of court.
6. Arbitrators, witnesses, etc., to be sworn.
7. Award to be in writing, etc.
8. Award to be filed in court, when parties neglect, etc., to comply with same.
9. How award for payment of money enforced.
10. How award other than for the payment of money enforced.
11. Power of court to set aside award; proceedings thereafter.
12. What proof required before court will enforce award.
13. Fees of arbitrators, etc., to be taxed in the award.

Arbitration of controversies; submission may be made by a rule of court.

SECTION 1. All persons who have any controversy, except when the possession or title of real estate may come in question, may submit such controversy to the arbitrament or umpirage of any person or persons, to be mutually agreed upon by the parties, and they may make such submission a rule of any court of record in the state. [29 v. 264, § 1, S. & C. 80.]

Parties to arbitration may enter into bonds; what to be set forth in bonds.

SEC. 2. The parties to such submission may enter into and exchange arbitration bonds; which bonds shall be conditioned for the faithful performance of the award, and set forth the names of the arbitrators or umpire, and the matters submitted to their determination; and when such is the agreement, the submission shall be made a rule of any court of record within the state, or a rule of any particular court of record named in the submission. [29 v. 264, § 2, S. & C. 81.]

Time and place of hearing to be specified in bonds.

SEC. 3. The arbitration bonds shall specify a time and place for the hearing, allowing the arbitrators or umpire the right to adjourn from time to time, until a conclusion is reached; and a time shall be named in the bonds within which the award shall be made. [29 v. 264, § 3, S. & C. 81.]

How process obtained.

SEC. 4. The parties shall have the benefit of legal process to compel the attendance of witnesses, which process shall be issued by the clerk of the court of common pleas, or any justice of the peace for the county in which the arbitration is held, and shall be returnable before the umpire or arbitrators on a day and place certain therein named. [29 v. 264, § 4, S. & C. 81.]

Disobedience of process, etc., a contempt of court.

SEC. 5. When a witness who has been duly served with such process fails to attend in obedience thereto, or to be sworn or to answer as a witness, except in case of a demand and failure to pay his fees, he shall be deemed guilty of contempt of the court from which the process issued; and on complaint made by the party injured, to the court of common pleas whose clerk issued the process, or to the justice, as the

case may be, such court or justice may proceed against him as in other like cases. [29 v. 264, § 5, S. & C. 81.]

Arbitrators, witnesses, etc., to be sworn.

SEC. 6. The umpire or arbitrators, and all witnesses for any party to the arbitration examined by the umpire or arbitrators, shall be under oath, to be administered to him or them respectively, by any judge or justice of the peace of the county. [29 v. 264, § 6, S. & C. 81.]

Award to be in writing, etc.

SEC. 7. The award shall be in writing, and signed by the umpire or arbitrators, or a majority of the arbitrators, named in the submission; and a true copy of the award shall, without delay, be delivered by the umpire or arbitrators to each of the parties in interest. [29 v. 264, § 7, S. & C. 81.]

Award to be filed in court when parties neglect, etc., to comply with same.

SEC. 8. If either of the parties neglect or refuse to comply with the award, the other party may file the award, together with the submission or arbitration bond, in the court named in the submission, or, if no particular court is named therein, then in the court of common pleas of the county where the arbitration was held. [29 v. 264, § 8, S. & C. 82.]

How award for payment of money enforced.

SEC. 9. The court, at the next term thereof after the award is filed, if no legal exceptions be made or taken to the award, or to other proceedings, and the award is for the payment of money, shall enter judgment thereon, as on the verdict of a jury, between the parties, and issue execution thereon as in other cases, immediately after the amount specified in the award is due and payable. [29 v. 264, § 9, S. & C. 82.]

How award other than for the payment of money enforced.

SEC. 10. When the award directs the performance of any act or thing other than the payment of money, a party who disobeys it shall be liable to be punished as for a contempt of court, either by attachment or execution, as the nature of the case requires. [29 v. 264, § 10, S. & C. 82.]

Power of court to set aside award; proceedings thereafter.

SEC. 11. If legal defects appear in the award or other proceedings, or if it be made to appear, on oath, at the term of the court at which the award and arbitration bond are filed, that the award was obtained by fraud, corruption, or other undue means, or that the arbitrators or umpire misbehaved, the court may set aside the award, and the matters submitted shall be retained by the court for trial as upon appeal; the court shall direct who shall be plaintiff and who shall be defendant in the action; and such proceedings shall thereafter be had therein, and such pleadings filed, as in a civil action; and the court may make such order as to costs in the premises, or such other order on the award, as it deems just and right. [74. v. 78, § 11.]

What proof required before court will enforce award.

SEC. 12. In all cases the party enforcing an award shall produce satisfactory proof to the court of the due execution of the submission or arbitration bond, and that the party neglecting or refusing to obey the award was furnished with a true copy thereof at least ten days before the term at which the application to enforce the award was made. [29 v. 264, § 12, S. & C. 83.]

SEC. 13. Each person chosen as and performing the du-

Fees of arbitrators, etc., to be taxed in the award.

ties of an arbitrator or umpire, under this chapter, shall be entitled to receive one dollar per day for his services; and each witness for his attendance, and justice or judge for administering oaths, shall be entitled to like fees as in other cases; which fees shall be taxed by the umpire or arbitrators, and included in the award. [29 v. 264, § 13; S. & C. 83.]

CHAPTER 4.

BASTARDY.

SECTION
1. Complaint, and warrant for arrest.
2. Examination of the complainant.
3. Adjournment of examination, and bond to answer complaint.
4. Compromise, and bond.
5. When no compromise made, accused to be recognized.
6. Proceedings for discharge, on bail, of person committed in default thereof.
7. Justice shall file transcript and papers with clerk.
8. Continuance of cause in common pleas; effect on bond.
9. Surrender of accused by sureties, and new recognizance.
10. Failure of accused to appear at court, and forfeiture of recognizance.
11. Accused to be permitted to defend.
12. The trial in court.
13. Order of court when accused adjudged reputed father.
14. When putative father entitled to benefits of the provisions of law relating to insolvent debtors.

SECTION—
15. Effect of death of mother upon the prosecution, if child living.
16. Effect of death of child upon the prosecution, if mother living.
17. Upon death of child after judgment, court may modify amount.
18. Justice to furnish complainant transcript on failure of officer to arrest accused.
19. Order of attachment, and grounds thereof.
20. Proceedings under attachment same as in civil actions.
21. Service by publication.
22. Personal service of copies of complaint may be made when residence of defendant known.
23. Order of court with respect to attached property.
24. Provision for prosecution of suits by persons interested in support of child.
25. Who may recover on bond given in bastardy proceeding.

Complaint, and warrant for arrest.

SECTION 1. When an unmarried woman, who has been delivered of or is pregnant with a bastard child, makes complaint thereof in writing, under oath, before any justice of the peace, charging a person with being the father of such child, the justice shall thereupon issue his warrant, directed to any sheriff or constable of this state, commanding him to pursue and arrest such accused person in any county in the state, and bring him forthwith before the justice to answer the complaint. [70 v. 111, § 1.]

Examination of the complainant.

SEC. 2. Upon the return of the warrant the justice shall examine the complainant, under oath, in the presence of the accused, respecting the cause of her complaint; the accused shall be allowed to ask the complainant, when under oath,

any question he may think necessary for his defense; and the examination of the complainant by the justice, the questions of the defendant, and the answers thereto by the complainant, shall be reduced to writing, in the presence of the justice, and subscribed by the complainant. [74 v. 11, § 2.]

Adjournment of examination, and bond to answer complaint.

SEC. 3. The justice may, on the request of either party, and upon good cause shown, continue the examination for a period not to exceed ten days, upon the accused entering into a recognizance to the state of Ohio, with sufficient surety, in a sum not less than three hundred nor more than six hundred dollars, to appear and answer the complaint, at the time fixed for the hearing thereof, and abide the order of the justice. [74 v. 11, § 2.]

Compromise and bond.

SEC. 4. If, during the examination before the justice, or at any time before judgment in the court of common pleas, the accused pay, or secure to be paid, to the complainant, such amount of money or property as she may agree to receive in full satisfaction, and give bond to the state of Ohio, with sufficient surety, to be approved by the justice, court, or judge in vacation, conditioned to save any county, township, or municipal corporation within the state free from all charges for the maintenance of such bastard child, the justice, court, or judge in vacation, shall discharge the accused from custody, upon payment of the costs of prosecution; but such agreement shall be made or acknowledged by both parties, in the presence of the justice, court, or judge, who shall thereupon enter a memorandum thereof upon his docket, or cause the same to be made upon the journal. [74 v. 11, § 2.]

When no compromise made, accused to be recognized.

SEC. 5. When a compromise is not made, the justice before whom the complaint was made shall bind the accused to appear at the next term of the court of common pleas, in a recognizance to the state of Ohio, with sufficient surety, in a sum not less than three hundred nor more than six hundred dollars, to answer the accusation, and abide the order of the court; and on neglect or refusal to find such security, the justice shall cause the accused to be committed to the jail of the county, there to be held to answer the complaint. [70 v. 112, § 4.]

Proceedings for discharge, on bail, of person committed in default thereof.

SEC. 6. A person committed to jail for failure to give such recognizance, may be discharged from custody by entering into recognizance, with sufficient surety, in a sum not less than one hundred nor more than six hundred dollars, to be taken and approved by a judge of the court of common pleas, or the probate judge of the county, and by him filed in the office of the clerk of the court of common pleas. [70 v. 112, § 5.]

Justice shall file transcript and papers with clerk.

SEC. 7. The justice before whom the examination is had shall, within thirty days thereafter, file with the clerk of the court of common pleas of the county a certified transcript of the proceedings, together with the recognizance, if any be taken, and all other papers therein. [70 v. 112, § 6.]

Continuance of cause in common pleas; effect on bond.

SEC. 8. If, at the next term of the court, the complainant has not been delivered, or is unable to attend, or if there be any other sufficient reason therefor, the court may order a continuance of the cause; and such continuance shall operate as a renewal of the recognizance, which shall remain in full force until final judgment. [70 v. 112, § 7.]

Surrender of accused by sureties, and new recognizance.

SEC. 9. If the sureties on the recognizance, at any term of the court of common pleas, surrender the accused, and request to be released from the recognizance, or if the court deem the recognizance insufficient, it may order a new recognizance to be taken, cancel the first recognizance, and commit the accused until a new recognizance is given. [70 v. 112, § 7.]

Failure of accused to appear at court and forfeiture of recognizance.

SEC. 10. If the accused fail to appear at the term of the court to which he is recognized, his recognizance shall be forfeited; and if a verdict of guilty be rendered, and judgment entered thereon as hereinafter provided, the amount of such forfeited recognizance shall be applied in payment of the judgment. [70 v. 112, § 8.]

Accused to be permitted to defend.

SEC. 11. Before or upon the hearing of the complaint, the court, in every case, shall permit the accused to appear in person, or by counsel, and make defense. [70 v. 115, § 20.]

The trial in court.

SEC. 12. When the accused pleads not guilty of the charge, before the court which he is recognized to appear, or, having been recognized, fails to appear, the court shall order the issue to be tried by a jury; at the trial of such issue, the examination before the justice shall be given in evidence by the complainant. [70 v. 113, § 9.]

Order of court when accused adjudged reputed father.

SEC. 13. If the accused, in person or by counsel, confess in court that the accusation is true, or if, upon the trial, the jury find him guilty, he shall be adjudged the reputed father of the bastard child, and shall stand charged with the maintenance thereof in such sum as the court shall order and direct, with payment of costs of prosecution; the court shall require the reputed father to give security to perform such order; and in case he neglect or refuse to give such security, and pay the costs of prosecution, he shall be committed to the jail of the county, there to remain, except as provided in the next section, until he comply with the order of the court. [70 v. 115, § 21; 75 v. 49, § 10.]

When putative father entitled to benefits of provisions of law relating to insolvent debtors.

SEC. 14. Such putative father, after having been confined in prison for the period of three months for failing to comply with the order of the court, provided for in the last section, shall be entitled to the benefits of the provisions of law relating to insolvent debtors, in the same manner as persons imprisoned for debt; but before such putative father shall receive or be entitled to such benefits, he shall give at least three days' notice to the complainant or her attorney of his intention to apply therefor. [72 v. 49, § 10.]

SEC. 15. The death of the mother shall not abate the prosecution, if the child is living, but a suggestion of the fact shall be made, and the name of the child substituted

upon the record for that of the mother, and a guardian ad litem appointed, who shall not be liable for costs; and in such case the testimony of the mother, reduced to writing before the justice, may be read in evidence. [70 v. 113, § 11.]

Effect of death of mother upon the prosecution, if child living.

SEC. 16. The death of a bastard child shall not be cause of abatement, or bar to a prosecution for bastardy, if the mother is living; but the court trying the cause shall, on conviction, take the death into consideration, and give judgment for such sum as it deems just, the payment of which, or security therefor, may be enforced as above provided. [70 v. 113, § 13.]

Effect of death of child upon prosecution, if mother living.

SEC. 17. Upon the death of a bastard child after judgment, and before the expiration of the time limited for the last payment on the judgment, the court which rendered the judgment may, on motion and notice, make such reduction in the amount of the same as is proper and just in consequence of such death. [70 v. 113, § 12.]

Upon death of child after judgment, court may modify amount.

SEC. 18. When it appears from the return of the officer upon the warrant that the accused could not be arrested, the justice shall, upon demand, forthwith make a certified transcript of the proceedings had before him, including copies of the complaint and warrant, with the return thereon, and deliver the same to the complainant, her agent or attorney. [70 v. 113, § 14.]

Justice to furnish complainant transcript on failure of officer to arrest accused.

SEC. 19. Upon the filing of the transcript mentioned in the last section, in the office of the clerk of the court of common pleas of the county in which the justice resides, an order of attachment shall be issued by the clerk of the court, when there is filed in his office an affidavit of the complainant, her agent or attorney, showing—

Order of attachment, and grounds thereof.

First. That the complainant is the mother of a bastard child, or that she is pregnant with a child, which, if born alive, will be a bastard.

Second. That the accused person is the father of such child.

Third. The existence of one or more of the following grounds:

1. That the accused is a non-resident of this state; or,
2. Has absconded with the intent to defraud complainant; or,
3. Has left the county of his residence to avoid the service of a warrant; or,
4. So conceals himself that a warrant cannot be served upon him. [70 v. 113, § 15.]

SEC. 20. The order of attachment shall issue without an undertaking; the amount of property seized thereon shall not exceed one thousand dollars in appraised value; and attachments under this chapter shall be subject to the provisions of this title in reference to attachments in civil actions, and be governed in all respects thereby. [70 v. 114, §§ 16, 17, 18.]

Proceedings under attachment same as in civil actions.

SEC. 21. Upon the return of the order of attachment,

Services by publication.

service may be had by the publication, for six consecutive weeks, in some newspaper of general circulation in the county wherein the cause is pending, of a notice of the pendency of the proceedings, stating the object thereof, the substance of the complaint, and that an order of attachment has been issued and served therein; and in such case, copies of the complaint and order of attachment, with the return thereon, shall forthwith be deposited in the postoffice, directed to the accused at his place of residence, unless it be made to appear to the court, by affidavit or otherwise, that such residence is unknown to the complainant, and could not, with reasonable diligence, be ascertained by her. [70 v. 114, § 19.]

Personal service of copies of complaint may be made when residence of defendant known.

SEC. 22. If the defendant's place of residence is known, personal service of certified copies of the complaint and order of attachment, with the returns thereon, may be made at complainant's election, instead of service by publication; and the cause may be heard and determined at any time after the expiration of six weeks from the time of personal service, or the first publication of the notice provided for in the last section. [70 v. 115, § 19.]

Order of court with respect to attached property.

SEC. 23. If upon such trial the accused be adjudged to be the reputed father of the child, the court shall order that unless the defendant, within a day to be fixed by the court, pay the sum adjudged against him, with costs of prosecution, so much of the property remaining in the hands of the officer, after applying the money arising from the sale of perishable property, and so much of the personal property, and lands and tenements, if any, as may be necessary to satisfy such order, be sold under the same restrictions and regulations as if the same had been levied on by execution; and the money arising therefrom, with the amount that may be recovered from the garnishee, shall be subject to the order and control of the court, and be applied to satisfy such order, in such sums and at such times as the court may order and direct; if there be not enough to satisfy the same, the order of the court shall stand, and execution may issue thereon for the residue, in all respects as in judgments at law; and any surplus of attached property, or its proceeds, shall be returned to the defendant. [70 v. 115, § 22.]

Provision for prosecution of suits by persons interested in support of child.

SEC. 24. When a woman has a bastard child, and neglects to bring a suit for its maintenance, or commences a suit and fails to prosecute it to final judgment, the trustees of a township, or treasurer of a municipal corporation, interested in the support of such bastard child, or the directors of a county infirmary in which she becomes a charge, when sufficient security is not offered to save such county, township, or municipal corporation from expense, may make complaint in behalf of such county, township, or municipal corporation, against him who is accused of begetting such child, or may take up and prosecute a complaint begun by the mother of such child. [70 v. 111, § 3.]

Who may recover on bond given in bastardy proceeding.

SEC. 25. The directors of the infirmary of a county, the trustees of a township, or the treasurer of a municipal corporation, in which a bastard child becomes a charge, may sue and recover upon any bond given to the state of Ohio in any proceeding against the reputed father of such bastard child; and the provisions of this chapter, and all the remedies herein allowed, shall apply to all cases in which the infirmary directors, trustees of townships, or treasurers of municipal corporations, are authorized to commence or prosecute a complaint against the reputed father of an illegitimate child. [70 v. 115, § 23.]

CHAPTER 5.

CONTEMPTS OF COURT.

SECTION
1. What contempts may be punished summarily.
2. What acts are contempts of court.
3. When accused entitled to be heard.
4. Right of accused to bail.
5. Bail bond to be given to satisfaction of clerk.
6. Trial by the court.
7. Punishment if found guilty.
8. Imprisonment till order obeyed.
9. Proceedings when party released on bail fails to appear.
10. Right of court who committed prisoner to release him.
11. Judgment final.
12. When the provisions of this chapter apply.

What contempts may be punished summarily.

SECTION 1. A court, or judge at chambers, may punish, summarily, a person guilty of misbehavior in the presence of or so near the court or judge as to obstruct the administration of justice. [32 v. 17, § 1, S. & C. 258.]

What acts are contempts of court.

SEC. 2. A person guilty of any of the following acts may be punished as for a contempt:

1. Disobedience of, or resistance to, a lawful writ, process, order, rule, judgment, or command of a court or an officer.

2. Misbehavior of an officer of the court in the performance of his official duties, or in his official transactions.

3. A failure to obey a subpœna duly served, or a refusal to be sworn, or to answer as a witness, when lawfully required.

4. The rescue, or attempted rescue, of a person or property in the custody of an officer by virtue of an order or process of court held by him.

5. A failure upon the part of a person recognized to appear as a witness in any court, to appear in compliance with the terms of his recognizance. [32 v. 17, § 1, S. & C. 258; 59 v. 31, S. & S. 97.]

When accused entitled to be heard.

SEC. 3. In cases under the last section, a charge in writing shall be filed with the clerk, an entry thereof made upon the journal, and an opportunity given to the accused to be heard by himself or counsel; but this section shall not be so

construed as to prevent such court from issuing process to bring the accused party into court, or from holding him in custody, pending such proceedings.

Right of accused to bail.

SEC. 4. In proceedings under the second section, if the writ be not returnable forthwith, the court may fix the amount of an undertaking to be given by the accused, with surety to the satisfaction of the sheriff; and upon the return of a writ, when it is not convenient to hear the charge without delay, the court shall fix the amount of an undertaking to be given, with surety to the satisfaction of the clerk, for the appearance of the accused to answer the charge.

Bail bond to be given to satisfaction of clerk.

SEC. 5. Upon the execution of such undertaking, with surety to the satisfaction of the sheriff or clerk, the accused shall be released from custody.

Trial by the court.

SEC. 6. Upon the day fixed for the trial the court shall proceed to investigate the charge, and shall hear any answer or testimony which the accused may make or offer.

Punishment if found guilty.

SEC. 7. The court shall then determine whether the accused is guilty of the contempt charged; and if it be adjudged that he is guilty, he may be fined not exceeding five hundred dollars, or imprisoned not more than ten days, or both.

Imprisonment till order obeyed.

SEC. 8. When the contempt consists in the omission to do an act which is yet in the power of the accused to perform, he may be imprisoned until he performs it.

Proceedings when party released on bail fails to appear.

SEC. 9. If the party be released on bail, and fail to appear upon the day named, the court may issue another order of arrest, or may order the undertaking for his appearance to be prosecuted, or both. If the undertaking be prosecuted, the measure of damages in the action shall be the extent of the loss or injury sustained by the aggrieved party by reason of the misconduct for which the contempt was prosecuted, and the costs of the proceeding, and such recovery shall be for the benefit of the party injured.

Right of court who committed prisoner to release him.

SEC. 10. When a person is committed to jail for contempt, the court or judge who made the order may discharge him from imprisonment, when it appears that the public interest will not suffer thereby.

Judgment final.

SEC. 11. The judgment and orders of a court or officer made in cases of contempt may be reviewed on error; but proceedings in error therein shall not suspend execution of the order or judgment until there is filed by the person in contempt, in the court rendering the judgment, or in the court or before the officer making the order, an undertaking payable to the state of Ohio, with sureties to the acceptance of the clerk of that court, in an amount fixed by the reviewing court, or a judge thereof, conditioned that if judgment be given against him, he will abide and perform the order or judgment.

When the provisions of this chapter apply.

SEC. 12. This chapter is not cumulative to the provisions of chapter three of this title, or of chapter four, title three, of this part, but furnishes a remedy in cases not thereby provided for.

CHAPTER 6.

DIVORCE AND ALIMONY.

SECTION
1. For what causes divorces may be granted.
2. Residence of plaintiff; where petition to be filed.
3. Residence of wife not to be affected by that of husband.
4. Service when defendant resident of the state.
5. Notice when defendant's residence unknown.
6. When cause may be heard.
7. Answer, hearing, and judgment.
8. Divorce not to affect legitimacy of children, etc.
9. Competency and effect of testimony and admissions of the parties.
10. Evidence of marriage.
11. Rights of wife when divorce granted for aggression of husband.
12. Rights of the wife when divorce granted upon her own aggression.
13. Application for alimony pending the suit.
14. Causes for which alimony allowed.
15. Proceedings on petition for alimony alone.
16. Change of venue.
17. Injunction against husband from disposing of property, etc.
18. Appeal.

For what cause divorce may be granted.

SECTION 1. Courts of common pleas may grant divorces for the following causes:

1. That either party had a husband or wife living at the time of the marriage from which the divorce is sought.
2. Willful absence of either party from the other for three years.
3. Adultery.
4. Impotency.
5. Extreme cruelty.
6. Fraudulent contract.
7. Any gross neglect of duty.
8. Habitual drunkenness for three years.
9. The imprisonment of either party in a penitentiary under sentence thereto; but the petition for divorce under this clause shall be filed during the imprisonment of the adverse party.
10. The procurement of a divorce without this state, by a husband or wife, by virtue of which the party who procured it is released from the obligations of the marriage, while the same remain binding upon the other party. [51 v. 377, §§ 1, 2, S. & C. 509.]

Residence of plaintiff; where petition to be filed.

SEC. 2. The plaintiff, except in an action for alimony alone, shall have been a resident of the state at least one year before filing the petition; all actions for divorce, or for alimony, shall be brought in the county where the plaintiff has a bona fide residence at the time of filing the petition, or in the county where the cause of action arose; and the court shall hear and determine the same, whether the marriage took place, or the cause of divorce occurred, within or without the state. [70 v. 258, § 8.]

Residence of wife not to be affected by that of husband.

SEC. 3. When a wife files her petition for a divorce, or for alimony, the residence of her husband shall not be so construed as to preclude her from the provisions of this chapter. [51 v. 377, § 12, S. & C. 514.]

Service when defendant resident of the state.

SEC. 4. When the defendant is a resident of this state, the clerk shall issue a summons, directed to the sheriff of the county in which he resides, or is found, which, together with a copy of the petition, shall be served on the defendant at least six weeks before the hearing of the cause. [54 v. 131, §§ 3, 8, S. & C. 511, 70 v. 258.]

Notice when defendant's residence unknown.

SEC. 5. When the defendant is not a resident of this state, or his residence is unknown, notice of the pendency of the action must be given by publication, as in other cases; and unless it be made to appear to the court, by affidavit or otherwise, that his residence is unknown to the plaintiff, and could not, with reasonable diligence, be ascertained, a summons, and a copy of the petition, shall forthwith, on the filing of the petition, be deposited in the post-office, directed to the defendant at his place of residence. [54 v. 131, § 3, S. & C. 511.]

When cause may be heard.

SEC. 6. The cause may be heard and decided at any time after the expiration of six weeks from the service of summons, or the first publication of notice. [54 v. 131, § 3, S. & C. 511.]

Answer, hearing, and judgment.

SEC. 7. If the defendant fail to appear, or, having appeared, admit or deny in his answer the allegations in the petition, the court shall thereupon proceed to hear and determine the cause; and if upon the hearing any of the causes for divorce charged in the petition be proven to the satisfaction of the court, it may pronounce the marriage contract dissolved, and both of the parties released from the obligations thereof. [51 v. 377, § 4, S. & C. 512.]

Divorce not to affect legitimacy of children.

SEC. 8. The granting of the divorce, and the dissolution of the marriage, shall in no wise affect the legitimacy of the children of the parties thereto; and the court shall make such order for the disposition, care, and maintenance of the children, if any there be, as is just and reasonable. [51 v. 377, § 4, S. & C. 512.]

Competency and effect of testimony and admissions of the parties.

SEC. 9. Pleadings under this chapter need not be verified; a divorce, or a judgment for alimony, shall not be granted upon the testimony or admission of a party unsupported by other testimony; nor shall any admission be received in evidence which the court has reason to believe has been obtained by fraud, connivance, coercion, or other improper means. [51 v. 377, §§ 4, 5, S. & C. 512.]

Evidence of marriage.

SEC. 10. Proof of cohabitation, and reputation of the marriage of the parties, shall be competent testimony to prove such marriage, and may be, within the discretion of the court, sufficient evidence thereof. [51 v. 377, § 6, S. & C. 512.]

SEC. 11. When a divorce is granted by reason of the

aggression of the husband, the wife shall, by force of the judgment of divorce, be restored to all her lands, tenements, and hereditaments, not previously disposed of, and if she so desire, the court shall restore to her any name she had before such marriage; she shall be allowed such alimony out of her husband's real and personal property as the court deems reasonable, having due regard to the property which came to him by marriage, and the value of his real and personal estate at the time of the divorce; which alimony may be allowed to her in real or personal property, or both, or by decreeing to her such sum of money, payable, either in gross or installments, as the court deems just and equitable; and if the wife survive her husband, she shall also be entitled to her right of dower in the real estate of her husband not allowed to her as alimony, of which he was seized at any time during the coverture, and to which she had not relinquished her right of dower. [51 v. 377, § 7, S. & C. 512.]

Rights of wife when divorce granted for aggression of husband.

SEC. 12. When the divorce is granted by reason of the aggression of the wife, she shall be barred of all right of dower in the lands of which her husband is seized at the time of filing the petition for divorce, or which he thereafter acquires, whether there be issue or not; and the effect of the judgment of divorce shall be to restore to her the whole of her lands, tenements, or hereditaments not previously disposed of, and the court shall adjudge to her such share of the husband's real or personal property, or both, as it deems just and reasonable. [51 v. 377, § 7, S. & C. 512.]

Rights of the wife when divorce granted upon her own aggression.

SEC. 13. The court, or a judge thereof in vacation, may, on notice to the opposite party of the time and place of the application, grant alimony to the wife for her sustenance and expenses during the suit, and an allowance to her for the support of minor children dependent upon the husband for support, and not provided for by him, during the pendency of an action for divorce, or for alimony alone; and when an appeal is taken by either party to the district court, that court, or a judge thereof in vacation, may grant like alimony and support during the pendency of the appeal, upon like notice; any person or corporation having possession or control of, or claiming any interest in, any property, real or personal, of the husband, out of which the wife seeks alimony, may be made a party defendant; and whenever it is made to appear to the court, or a judge in vacation, that a husband is about to so dispose of or incumber his property, or any part thereof, as to defeat the wife in obtaining alimony, such court or judge may allow an injunction to prevent the same, with or without bond, at discretion; and the wife may sell and assign the order for alimony or allowance after the same is made. [72 v. 145, § 9.]

Application for alimony pending the suit.

SEC. 14. When the wife files her petition for divorce or alimony, the husband may file a cross-petition for divorce, upon either cause mentioned in section one of this chapter. The wife may file her petition for alimony alone; or if a

Cause for which alimony allowed.

petition for divorce has been filed by the husband, she may file her cross-petition for alimony, with or without a prayer for the dissolution of the marriage contract; which petition or cross-petition for alimony may be for the following causes:

1. Adultery.
2. Gross neglect of duty.
3. Abandonment of the wife without good cause.
4. That there is a separation in consequence of ill treatment on the part of the husband, whether the wife is maintained by the husband or not.
5. Habitual drunkenness.
6. Sentence to and imprisonment in a pentitentiary; in which case the application must be made while the husband is so confined. [54 v. 131, § 10, S. & C. 513.]

Proceedings on petition for alimony alone.

SEC. 15. The court shall, upon satisfactory proof of any or all of the charges in the petition, make such order for the disposition, care, and maintenance of the children of such marriage, if there are any, as is just and reasonable; and give judgment in favor of the wife for such alimony out of her husband's real and personal property as is just and equitable, to be allowed to her in real or personal property, or both, or in money, payable either in gross or in installments; and the effect of such judgment shall be to restore to the wife all her lands, tenements, and hereditaments not previously disposed of, and to vest in her the right and power to acquire, hold, manage, and dispose of property, money, and choses in action, and to bring and maintain suits in her own behalf, free from the control or interference of her husband, unless the court, for good cause, vest such property or powers in trustees for her use and benefit. [51 v. 377, § 11, S. & C. 514.]

Change of venue.

SEC. 16. Upon application of a party, and his or her affidavit that a fair and impartial hearing and determination cannot be had before the court in which a petition for divorce or alimony is filed, a change of venue shall be allowed, and the cause removed to any county of the same judicial district for hearing and determination. [51 v. 377, § 13, S. & C. 514.]

Injunction against husband from disposing of property, etc.

SEC. 17. A married woman may file her petition in the court of common pleas, setting forth that her husband, from habitual intemperance, or any other cause, is about to waste and squander the property, legal or equitable, money, credits, or choses in action, to which she is entitled in her own right, or any part thereof, or is proceeding, or about to proceed fraudulently to convert the same, or any part thereof, to his own use, for the purpose of placing the same beyond her reach, and depriving her of the benefit thereof; and the court may enjoin the husband from disposing of, or otherwise interfering with, such property, money, credits, or choses in action, and may appoint a receiver to manage and control the same for the benefit of the wife, and may also

make such other order in the premises as it deem just and proper. Upon the filing of the petition, a provisional injunction may be allowed as in other cases, with or without bond, at discretion; and such petition shall be filed in the county where the petitioner resides, and the husband made a party defendant in the same manner as in the case of a petition for a divorce. [51 v. 377, § 14, S. & C. 514.]

Appeal.

SEC. 18. No appeal shall be allowed from any judgment or order of the court of common pleas under this chapter, except from an order dismissing the petition without final hearing, or from a final order or judgment granting or refusing alimony, or in cases under section seventeen of this chapter. When judgment is rendered for both divorce and alimony, the appeal shall apply only to so much of the judgment as relates to the alimony; and when an appeal is taken by the wife, she shall not be required to give bond. [51 v. 54 v. 131, § 17; S. & C. 515.]

CHAPTER 7.

DOWER.

SECTION
1. How heir may assign dower.
2. Petition for dower by widow.
3. Incumbrances may be presented by cross petition.
4. Proceedings when land situated in different counties.
5. Proceedings in case of death of plaintiff before assignment.
6. Appointment of commissioners to assign dower; duty of sheriff.
7. Proceedings upon return of assignment of dower.
8. How dower assigned when estates indivisible.
9. Dower of the widow during pendency of the petition.
10. Certain improvements to be excluded in estimating yearly value.
11. Minor heir not to be prejudiced by collusive assignment of dower.
12. Who to pay costs.
13. When widow may elect to be endowed out of proceeds of sale.
14. Election by answer is a release of dower to purchaser.
15. Guardian of insane widow may elect for her.

How heir may assign dower.

SECTION 1. When the lands of a deceased person are not incumbered by mortgage, or by judgment obtained against such decedent in his lifetime, the heir or other person having the next immediate estate of inheritance, may assign to the widow her dower therein by writing, under his hand and seal, particularly describing the same; which, if accepted by the widow, shall be a good assignment in law. [29 v. 249, § 8, S. &. C. 520.]

Petition for dower by widow.

SEC. 2. A widow may file her petition for dower in the court of common pleas or superior court, against the heir, or other person having the next immediate estate of inheritance, or any other estate or interest therein, setting forth the

right thereto, and describing the tracts of lands of which she claims to be endowed; and the court, on the hearing, shall render such judgment as to it appears just and consistent with the rights of all the parties interested therein. [63 v. 33, § 9, S. & S. 310.]

Incumbrances may be presented by cross-petition.

SEC. 3. When the rights of a lessee or lien-holder are shown to the court by cross-petition filed before judgment, such rights and liens shall be regarded by the court; and no inequality shall be allowed, or any injustice done, to any such lessee or lien-holder. [29 v. 249, § 10, S. & C. 520.]

Proceedings when land situated in different counties.

SEC. 4. When the lands lie in several counties, the petition must be filed in the county in which the principal messuage of the deceased is situated; and the court of such county shall have complete jurisdiction, and may order the whole dower of such widow to be assigned in any one or more of such counties, and out of any one or more of such tracts of land, if the same may be done without prejudice to the rights of any person claiming title to, or holding a lien on such land. [29 v. 249, § 11, S. & C. 520.]

Proceedings in case of death of plaintiff before assignment.

SEC. 5. When the plaintiff dies before the assignment of her dower, or before entry of the final judgment, the action may be revived in the name of her executor or administrator; the court shall proceed to hear and determine, if not before decided, whether the plaintiff would have been entitled to dower in such action if she had lived; if it be found that she would have been so entitled, the court shall adjudge in favor of such executor or administrator a sum equal to one-third of the rental value of the real estate in which it is found the plaintiff would have been entitled to dower, from the time of filing the petition until her death, after deducting one-third of the necessary expenses; and the sum so adjudged in favor of such executor or administrator shall be a lien upon the real estate in which such plaintiff would have been entitled to dower, and its payment may be enforced by sale as upon execution. [60 v. 10, S. & S. 311.]

Appointment of commissioners to assign dower; duty of sheriff.

SEC. 6. When dower is adjudged, the court shall appoint three judicious, disinterested men of the county in which the action is pending, who are not of kin to either of the parties interested, to be commissioners, and issue its order to the sheriff of that county, commanding him that, by the oaths of the commissioners, which may be administered by him, he cause to be set off and assigned such dower to the plaintiff, in the manner set forth in the judgment. [54 v. 27, § 12, S. & C. 521; 38 v. 37, S. & C. 522.]

Proceedings upon return of assignment of dower.

SEC. 7. The commissioners and sheriff shall in all things obey the order, and return their proceedings thereon to the court at such time as the court appoints. If the court approve the assignment, it shall be entered on the records thereof, and shall be thenceforth valid and effective in law; and execution shall thereupon be issued, directing the sheriff of the county to put the widow in full possession of the dower assigned to her. [54 v. 27, § 12, S. & C. 521.]

How dower assigned when estates indivisible.

SEC. 8. When an estate of which a woman is dowable is entire, and no division thereof can be made by metes and bounds, dower shall be assigned as of a third part of the rents, issues, and profits thereof, to be computed and ascertained by the commissioners. [29 v. 249, § 14, S. & C. 521.]

Dower of the widow during pendency of the petition.

SEC. 9. The commissioners shall, after they have set off and assigned dower, make a just and true appraisement of the yearly value, after deducting necessary expenses, of the real estate in which the widow is entitled to dower, estimating such value from the day of filing the petition to the day of assignment of dower, and make return of such appraisement and assignment; and the court shall adjudge the payment of one-third of the whole sum so returned, to the widow, out of the real estate not covered by her dower, upon which judgment execution may issue. Nothing herein contained shall be so construed as to require execution to be issued against such of the defendants in dower as are minors; but in all such cases the dower shall operate as a lien upon the real estate, for their proportion of the decree, until the same is fully paid. [41 v. 6, § 1, S. & C. 522.]

Certain improvements to be excluded in estimating yearly value.

SEC. 10. The commissioners, in making the appraisement of the yearly value of the real estate provided for in the last section, shall exclude all permanent or valuable improvements made thereon after the husband of such widow ceased to be the owner thereof. [41 v. 6, § 2, S. & C. 522.]

Minor heir not to be prejudiced by collusive assignment of dower.

SEC. 11. If during the minority of an heir, dower is assigned to a widow not entitled thereto, or if she recover the same by the default, fraud, or collusion of the guardian, such heir may, on coming of age, have an action against such widow to recover the lands wrongfully awarded. [29 v. 249, § 13, S. & C. 521.]

Who to pay costs.

SEC. 12. If resistance be made to the petition of a widow claiming dower, and the court find that she is entitled to dower as claimed in the petition, the defendant so resisting shall be required to pay all the costs of suit; but if no resistance be made, the widow shall pay one-third, and the legal owner of the real estate shall pay two-thirds of the cost. [41 v. 6, § 22, S. & C. 520.]

When widow may elect to be endowed out of proceeds of sale.

SEC. 13. In actions for partition, when the estate can not be divided, and is ordered to be sold, and in actions for the sale of real estate by executors, administrators, and guardians, the widow of any decedent who has a dower interest therein, being a party, may file her answer, and waive the assignment of dower by metes and bounds, and ask the court to have the estate sold free of dower, and to allow her in lieu thereof such sum of money out of the proceeds of the sale as the court deems the just and reasonable value of her dower interest therein. [74 v. 201, § 1.]

Election by answer is a release of dower to purchaser.

SEC. 14. The answer of the widow shall have the same force and effect, and shall be taken and held to be, in all respects, as a deed of release to the purchaser of such estate of the dower interest therein of such widow. [74 v. 201, § 2.]

Guardian of insane widow may elect for her.

SEC. 15. The guardian of a widow who has been adjudged insane may appear and answer for her in such actions, subject to the approval of the court in which the action is pending; and the answer of the guardian shall have the same force and effect as if the widow answered personally; but the guardian shall be liable to the widow, or her heirs, for all damage or loss sustained by his fraud or collusion, notwithstanding the approval of the court. [74 v. 201, § 3.]

CHAPTER 8.

HABEAS CORPUS.

SECTION		SECTION	
1.	Who entitled to the writ.	16.	When prisoner must be discharged.
2.	Who may grant it.	17.	When prisoner may be committed, or let to bail.
3.	Requisites of application therefor.	18.	When prisoner must be committed.
4.	When the writ will not be allowed.	19.	When the return is evidence, and when only a plea.
5.	When the writ must be granted.	20.	Penalty upon clerk for refusal to issue the writ.
6.	Who to issue the writ, and when.	21.	Penalty for disobeying the writ.
7.	How prisoner may be designated.	22.	Persons enlarged upon the writ not to be again imprisoned.
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Who entitled to the writ.

SECTION 1. A person unlawfully restrained of his liberty, or a person entitled to the custody of another, of which custody he is unlawfully deprived, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment, restraint, or deprivation. [29 v. 164, § 1, S. & C. 681.]

Who may grant it.

SEC. 2. The writ may be granted by the supreme court, district court, superior court, court of common pleas, probate court, or a judge of either. [29 v. 164, § 1, S. & C. 681; 51 v. 167, § 3, S. & C. 1213.]

Requisites of application therefor.

SEC. 3. Application for the writ shall be by petition, signed and verified either by the party for whose relief it is intended, or by some person for him, and shall specify—

1. That the person in whose behalf the application is made is imprisoned, or restrained of his liberty.

2. The office, or name, of the person by whom he is so confined or restrained; or, if both are unknown or uncertain, he may be described by an assumed appellation; and the person who is served with the writ shall be deemed the person intended.

3. The place where he is so imprisoned or restrained, if known.

4. A copy of the commitment or cause of detention of such person shall be exhibited, if it can be procured without impairing the efficiency of the remedy; or, if the imprisonment or detention is without any legal authority, such fact shall appear. [29 v. 164, § 1, S. & C. 681; 45 v. 45, §§ 4, 5, S. & C. 684.]

When the writ will not be allowed.

SEC. 4. If it appear that the person alleged to be restrained of his liberty is in custody of an officer under process issued by a court or magistrate, or by virtue of the judgment or order of a court of record, and that the court or magistrate had jurisdiction to issue the process, render the judgment, or make the order, the writ shall not be allowed; or, if the jurisdiction appear after the writ is allowed, the person shall not be discharged by reason of any informality or defect in the process, judgment or order. [29 v. 164, § 1, S. & C. 681; 32 v. 23, S. & C. 684.]

When the writ must be granted.

SEC. 5. A court or judge authorized to grant the writ must, when a petition therefor is presented, if it appear that the writ ought to issue, grant the same forthwith. [29 v. 164, § 1, S. & C. 681.]

Who to issue the writ, and when.

SEC. 6. The writ, upon its allowance, shall be issued forthwith, by the clerk of the court whereof the person who granted it is a judge, under the seal of such court; or, in case of emergency, such judge may issue the writ under his own hand, and may depute any officer or person to serve it. [29 v. 164, § 1, S. & C. 681.]

How prisoner may be designated.

SEC. 7. The person to be produced shall be designated by his name, if known, and if not known, or uncertain, he may be described in any other way so as to make known who is intended. [45 v. 45, § 16, S. & C 685.]

Requisites of the writ in certain case.

SEC. 8. In case of confinement, imprisonment, or detention by an officer, the writ shall be directed to him, and shall command him to have the body of such person before the court or judge designated in the writ, at a time and place therein specified. [45 v. 45, § 1, S. & C. 684.]

Form of writ when prisoner not in custody of an officer.

SEC. 9. In case of confinement, imprisonment, or detention, by a person not an officer, the writ shall be in the form following:

The State of Ohio, county, ss.

To the sheriff of our several counties, greeting:

We command you that the body of , of , by , of , imprisoned and restrained of his liberty, as it is said, you take and have before , a judge of our court, or, in case of his absence or disability, before some other judge of the same

court, at , forthwith to do and receive what our said judge shall then and there consider concerning him in his behalf; and summon the said then and there to appear before our said judge, to show the cause of the taking and detention of the said .

[SEAL.] Witness , at , this day of , in the year . [45 v. 45, § 1, S. & C. 684.]

How and when writ may be served.

SEC. 10. The writ may be served in any county, by the sheriff of the same or any other county, or by a person deputed by the court or judge. [45 v. 45, § 2, S. & C. 684.]

How executed and returned.

SEC. 11. The officer or person to whom the writ is directed shall convey the person so imprisoned or detained, and named in the writ, before the judge allowing the writ, or in case of his absence or disability, before some other judge of the same court, on the day specified in the writ; and he shall make due return of the writ, together with the day and cause of the caption and detention of such person, according to the command thereof. [25 v. 164, § 2, S. & C. 681.]

When it may be returned to another judge or court.

SEC. 12. When the writ is issued by a court in session, if the court has adjourned when the same is returned, it shall be returned before any judge of the same court; and when the writ is returned before one judge, at a time when the court is in session, he may adjourn the case into the court, there to be heard and determined. [45 v. 45, § 3, S. & C. 684.]

What shall be stated in the return of the writ.

SEC. 13. When the person to be produced is imprisoned or restrained by an officer, the person who makes the return shall state therein, and in other cases the person in whose custody the prisoner is found shall state, in writing, to the court or judge before whom the writ is returnable, plainly and unequivocally—

1. Whether he has, or has not, the party in his custody or power, or under restraint.

2. If he has the party in his custody or power, or under restraint, he shall set forth, at large, the authority and the true and whole cause of such imprisonment and restraint, with a copy of the writ, warrant, or other process, if any, upon which the party is detained.

3. If he has had the party in his custody or power, or under restraint, and has transferred such custody or restraint to another, he shall state, particularly, to whom, at what time, for what cause, and by what authority, such transfer was made. [45 v. 45, § 6, S. & C. 685.]

The return must be signed and sworn to.

SEC. 14. The return or statement shall be signed by the person who makes it; and it shall also be sworn to by him, unless he is a sworn public officer, and makes the return in his official capacity. [45 v. 45, § 7, S. & C. 684.]

Adjournment of cause.

SEC. 15. The court or judge to whom the writ is returned, or the court into which it is adjourned, may, for good cause shown, continue the cause, and shall make such order for the safe keeping of the person imprisoned or detained as the nature of the case requires. [45 v. 45, § 9, S. & C. 684.]

When prisoner must be discharged.

SEC. 16. When the judge has examined into the cause of caption and detention of the person so brought before him, and is satisfied that he is unlawfully imprisoned or detained, he shall forthwith discharge him from confinement. [29 v. 164, § 3, S. & C. 682.]

When prisoner may be committed, or let to bail.

SEC. 17. When the person is confined or detained in a legal manner, on a charge of having committed a crime or offense which is bailable, the judge shall, at his discretion, recommit him, or let him to bail; and if he be let to bail, the judge shall cause him to enter into a recognizance, with sufficient surety, in such sum as he deems reasonable—the circumstances of the prisoner, and the nature of the offense charged, considered—conditioned for his appearance at the court where the offense is properly cognizable; the judge shall certify his proceedings, together with the recognizance, forthwith, to the proper court; and if the person charged as aforesaid fail to enter into such recognizance, he shall be committed to prison by the judge. [29 v. 164, § 3, S. & C. 682.]

When prisoner must be committed.

SEC. 18. If it appear that the prisoner was committed by a judge or justice, and is plainly and specifically charged in the warrant of commitment with a felony the punishment whereof is capital, he shall not be removed, discharged, or bailed. [29 v. 164, § 8, S. & C. 683.]

When the return is evidence, and when only a plea.

SEC. 19. If it appear that the prisoner is in custody under a warrant or commitment in pursuance of law, the return shall be considered prima facie evidence of the cause of detention; but if he is restrained of his liberty by any alleged private authority, the return of the writ shall be considered only as a plea of the facts therein set forth, and the party claiming the custody shall be held to make proof of such facts; and upon the final disposition of any case, the court or judge shall make such order as to costs as the case requires. [45 v. 45, § 8, S. & C. 685.]

Penalty upon clerk for refusal to issue the writ.

SEC. 20. If a clerk of a court refuse to issue the writ, after allowance thereof and demand therefor, he shall forfeit to the party aggrieved the sum of five hundred dollars. [29 v. 164, § 5, S. & C. 682.]

Penalty for disobeying the writ.

SEC. 21. A person to whom a writ is directed, who neglects or refuses to obey or make return of the same, according to the command thereof, or makes a false return thereof, or who, upon demand made by the prisoner, or any person on his behalf, refuses to deliver to the person demanding, within six hours after the demand therefor, a true copy of the warrant of commitment and detainer of the prisoner, shall, for the first offense, forfeit to the party aggrieved two hundred dollars, and for the second offense four hundred dollars, and, if an officer, shall be incapable of holding his office. [29 v. 164, § 4, S. & C. 682.]

SEC. 22. A person who is set at large upon a writ shall not be again imprisoned for the same offense, unless by the legal order or process of the court wherein he is bound by

Persons enlarged upon the writ not to be again imprisoned.

recognizance to appear, or other court having jurisdiction of the cause or offense; and a person who knowingly, contrary to the provisions of this chapter, re-commits or imprisons, or causes to be re-committed or imprisoned, for the same offense, or pretended offense, any person so set at large, or knowingly aids or assists therein, shall forfeit to the party aggrieved five hundred dollars, notwithstanding any colorable pretense or variation in the warrant or commitment. [29 v. 164, § 6, S. & C. 682.]

Prisoner not to be removed from custody of one officer to another, unless, etc.

SEC. 23. A person committed to prison, or in custody of an officer, for any criminal matter, shall not be removed therefrom into the custody of another officer, unless by legal process, or the prisoner be delivered to an inferior officer to carry to jail, or, by order of the proper court, be removed from one place to another within the state, for trial, or in case of fire, infection, or other necessity; and a person who, after such commitment, makes, signs, or countersigns any warrant for such removal, contrary to this section, shall forfeit to the party aggrieved five hundred dollars. [29 v. 164, § 7, S. & C. 683.]

No person to be sent out of the state for crime committed in the state.

SEC. 24. No person shall be sent prisoner to any place out of this state for any crime or offense committed within this state. [65 v. 165, § 1, S. & S. 387.]

A person so transported may have an action.

SEC. 25. A person so imprisoned may maintain an action for false imprisonment against the person by whom he was so imprisoned or transported, and against a person who contrives, writes, signs, seals, or countersigns any writing for such imprisonment or transportation, or aids or assists in the same, or against any of them. [65 v. 165, § 1, S. & S. 387.]

Record of writs; error, etc.

SEC. 26. The proceedings upon a writ of habeas corpus shall be recorded by the clerks respectively, and may be reviewed on error as in other cases. [45 v. 45, § 10, S. & C. 685.]

Actions for penalties, and limitation.

SEC. 27. The penalties in this chapter provided may be recovered by the party aggrieved, his executors or administrators, against the offender, his executors or administrators, by civil action in any court having cognizance of the same; but no action shall be brought for any offense against the provisions of this chapter after two years after the offense was committed, except in cases of imprisonment of the party aggrieved, when action may be brought within two years after his delivery out of prison, or after his decease, if he die in prison. [29 v. 164, § 10, S. & C. 683.]

Fees and costs.

SEC. 28. The fees of officers and witnesses shall be taxed by the judge, on his return of his proceedings on the writ, and shall be collected as part of the original costs in the case; and when the prisoner is discharged the costs shall be taxed to the state, and paid out of the county treasury, upon the warrant of the county auditor; but no officer or person shall have the right to demand payment in advance of any fees which he is entitled to by virtue of the proceedings. When the writ is demanded or issued for the discharge from custody

of a person confined under color of proceedings in any criminal case. When a person in custody by virtue or under color of proceedings in any civil case is discharged, costs shall be taxed against the party at whose instance he was so in custody; and if he be remanded to custody, costs shall be taxed against him. [45 v. 45, § 11, S. & C. 685.]

CHAPTER 9.

PARTITION.

SECTION
1. Who may be compelled to partition.
2. Where proceedings for partition may be had.
3. Who may file petition, and what to set forth.
4. The order of partition.
5. The writ of partition.
6. Duty of commissioners in making partition.
7. Their duty when partition of more than one tract demanded.
8. Amicable partition.
9. Commissioners to appraise land when they cannot divide it; election of party to take at appraisement.
10. Terms of payment when estate taken by party; execution of conveyances.
11. Sale of the estate when the parties do not elect to take the same.
12. How such sale conducted, and terms thereof.
13. Confirmation of sale, and execution of conveyances.
14. Distribution of proceeds; sheriff's liability.
15. Proceedings when estate has been once offered and not sold.
16. When successor of sheriff who made sale to execute conveyance.
17. When widow is entitled to dower, or an interest is subject to a life estate.
18. Commissioners appointed to partition estate to assign dower.
19. Power of guardian to act for ward in partition.
20. Powers of foreign guardian.
21. Actions by one parcener against another, etc.
22. Partition of property belonging to religious corporations.
23. Partition of property belonging to religious societies.
24. When such partition can be made, and effect thereof.
25. Costs and expenses to be equitably taxed.

SECTION 1. Tenants in common, and coparceners, of any estate in lands, tenements, or hereditaments, within the state, may be compelled to make or suffer partition thereof in manner hereinafter prescribed. [29 v. 254, § 1, S. & C. 893.]

Who may be compelled to partition.

SEC. 2. When the estate is situated in one county, the proceedings shall be had in that county; and when situated in two or more counties, the proceedings may be had in any county wherein a part of such estate is situated. [29 v. 254, § 1, S. & C. 894.]

Where proceedings for partition may be had.

SEC. 3. A person entitled to partition of an estate may file his petition therefor in the court of common pleas, setting forth the nature of his title, and a pertinent description of the lands, tenements, or hereditaments of which partition is demanded, and naming each tenant in common, coparcener, or other interested person, as defendants therein. [29 v. 254, § 2, S. & C. 895.]

Who may file petition, and what to set forth.

The order of partition.

SEC. 4. If the court find that the plaintiff has a legal right to any part of such estate, it shall order partition thereof in favor of the plaintiff, or all parties in interest, appoint three disinterested and judicious freeholders of the vicinity to be commissioners to make the partition, and order a writ of partition to issue. [29 v. 254, § 2, S. & C. 895; 74 v. 152.]

The writ of partition.

SEC. 5. The writ of partition may be directed to the sheriff of either of the counties in which any part of the estate lies, and shall command him that, by the oaths of the commissioners, which oath may be administered by him, he cause to be set off and divided to the plaintiff, or each party in interest, such part and proportion of the estate as the court shall order. [38 v. 37, S. & C. 900; 74 v. 152, § 4.]

Duty of commissioners in making partition.

SEC. 6. In making such partition the commissioners must view and examine the estate, and, on their oaths, set apart the same in such lots as will be most advantageous and equitable, having due regard to the improvements, situation, and quality of the different parts thereof. [29 v. 254, § 5. S. & C. 896.]

Their duty when partition of more than one tract demanded.

SEC. 7. When partition of more than one tract is demanded, the commissioners shall set off to each plaintiff or party in interest, his proper proportion in each of the several tracts, unless the several tracts are owned by the same proprietors in the same proportion in each tract, in which case the whole share of any proprietor, in and to all the several tracts, may be set off to such proprietor according to the best discretion of the commissioners. [29 v. 254, § 6, S. & C. 896.]

Amicable partition.

SEC. 8. Before a writ of partition is issued, the person of whom partition is demanded may appear in court, in person or by attorney, and consent to a partition of the estate, agreeably to the prayer and facts set forth in the petition; which amicable partition, when made and recorded, shall be valid and binding between the parties thereto. [29 v. 254, § 7, S. & C. 897.]

Commissioners to appraise land when they cannot divide it; election of party to take at appraisement.

SEC. 9. When the commissioners are of opinion that the estate cannot be divided according to the demand of the writ, without manifest injury to the value thereof, they shall return that fact to the court, with a just valuation of the estate; whereupon, if the court approve of the return, and one or more of the parties elect to take the estate at such appraised value, the same shall be adjudged to him or them, upon his or their paying to the other parties their proportion of the appraised value thereof, according to their respective rights, or securing the same as hereinafter provided. [65 v. 71, § 8, S. & S. 505.]

Terms of payment when estate taken by party; execution of conveyances.

SEC. 10. If one or more of the parties elect to take the estate at the appraised value, the terms of payment, unless the court, on good cause shown, by special order, direct and require the entire payment to be made in cash, or unless all the parties in interest agree thereon, shall be one-third cash, one-third in one year, and one-third in two years, with interest, the deferred payments to be secured to the satisfaction

of the court; and on payment being made in full, or in part, with sufficient security for the remainder, as above provided, the sheriff shall, according to the order of the court, make and execute a conveyance to the party electing to take the same. [65 v. 71, § 8, S. & S. 505.]

Sale of the estate when the parties do not elect to take the same.

SEC. 11. If no such election to take the estate be made, the court may, at the instance of a party, make an order for the sale thereof at public auction, by the sheriff who executed the writ of partition, or his successor in office. [29 v. 254, § 9, S. & C. 897.]

How such sale conducted, and terms thereof.

SEC. 12. All such sales shall be made at the door of the court-house, unless the court, for good cause, direct the same to be made on the premises, and shall be conducted in all other respects as a sale upon execution, except that it shall not be necessary to appraise the estate; but the estate shall not be sold for less than two-thirds of the appraised value thereof as returned by the commissioners; and unless the court, by special order, direct and require, on good cause shown, the entire payment to be made in cash, the purchase money shall be payable one-third on the day of sale, one-third in one year, and one-third in two years thereafter, with interest. [29 v. 254, § 9, S. & C. 897; 45 v. 59, S. & C. 900; 49 v. 102, S. & C. 901.]

Confirmation of sale, and execution of conveyances.

SEC. 13. On the return by the sheriff of his proceedings, the court shall examine the same; if sale has been made, and the court approve such sale, the sheriff, on receiving payment of the consideration money, or taking sufficient security therefor, to the satisfaction of the court, shall execute and deliver a deed to the purchaser. [29 v. 254, § 10, S. & C. 897.]

Distribution of proceeds; sheriff's liability.

SEC. 14. The money or securities arising from a sale of or an election to take the estate, shall be distributed and paid, by order of the court, to the parties entitled thereto, in lieu of their respective parts and proportions of the estate, according to their just rights therein; and all receipts of such money or securities by the sheriff shall be in his official capacity, and his sureties on his official bond shall be liable for any misapplication thereof. [65 v. 71, § 8, S. & S. 505; 29 v. 25, § 10, S. & C. 897.]

Proceedings when estate has been once offered and not sold.

SEC. 15. When the estate has been once offered and not sold, an alias writ for the sale thereof may issue as often as need be; and the court may order a revaluation, by three judicious and disinterested freeholders of the vicinity, to be appointed by the court, and direct a sale of the estate at not less than two-thirds of such revaluation; or if the court deem it for the interest of the parties, it may order a sale without such revaluation, at not less than such sum as it may fix. [29 v. 25, § 11, S. & C. 898.]

When successor of sheriff who made sale to execute conveyance.

SEC. 16. When a conveyance of land sold, or elected to be taken, is not made by the officer who made the sale, the court, being first satisfied that such sale or election was regularly made, and that the purchase money has been fully paid or secured, may, on motion, order the sheriff of the

county, or officer performing the duties of sheriff, to execute and deliver to the purchaser, or person electing to take the property, a deed for the lands so sold or elected to be taken. [34 v. 1, § 1, S. & C. 859.]

When widow is entitled to dower, or an interest is subject to a life estate.

SEC. 17. When a widow is entitled to dower in an estate of which partition is sought, dower must be assigned her therein, except in the following cases:

1. When an assignment thereof has already been made.

2. When she has, by answer, elected to be endowed out of the proceeds of a sale of the estate, and the commissioners do not make partition, but return a valuation of the estate.

3. When the right of dower extends only to an undivided interest in the estate.

In the latter case, and in cases where an undivided interest is subject to a life estate, and the tenant for life has not, by answer, elected to receive the value of his estate out of the proceeds of a sale of the interest, the commissioners may, if an appraisement of the estate is to be returned, assign the dower, or set off the life estate, or, if they find it for the interest of the parties so to do, they may appraise the whole interest, and the widow and the tenant for life shall receive the value of their interests out of the proceeds of a sale thereof. [29 v. 254, § 12, S. & C. 898.]

Commissioners appointed to partition estate to assign dower.

SEC. 18. The commissioners appointed by the court to make partition shall set off to such widow her dower in the estate; and in the performance of such duty they shall be governed in all respects by, and the proceedings shall conform to, the provisions prescribing the duties of commissioners in assigning dower, in chapter seven of this division. [29 v. 254, § 13, S. & C. 898.]

Power of guardian to act for ward in partition.

SEC. 19. The guardian of a minor, idiot, or insane person, may, on behalf of his ward, do and perform any act, matter, or thing respecting the partition of an estate which such minor, idiot, or insane person could do under this chapter if he were of age, and of sound mind; and he may elect, on behalf of such ward, to take the estate, when the same can not be divided without injury, and make payments therefor on behalf of such ward. [29 v. 254, § 14, S. & C. 899; 48 v. 38, § 1, S. & C. 901.]

Powers of foreign guardian.

SEC. 20. A person appointed according to the laws of any other state or country, to take charge of the estate of an idiot or insane person not a resident of this state, upon being duly authorized in this state to take charge of such estate situated in this state, may act in the partition of such estate to the same extent that the guardian of an idiot or insane person is authorized to do by the last section. [48 v. 38, § 2, S. & C. 901.]

Actions by one parcener against another, etc.

SEC. 21. One tenant in common, or co-parcener, may recover from another his share of rents and profits received by such tenant in common or co-parcener from the estate, according to the justice and equity of the case; and one par-

cener may maintain an action of waste against another but no parcener shall have or possess any privileges over another in any election, division, partition, or matter to be made or done, concerning lands which have descended. [65 v. 187, S. & S. 578; 29 v. 254, § 15, S. & C. 899.]

Partition of property belonging to religious corporations.

SEC. 22. When two or more religious denominations, or other societies or associations, have united in a corporation, and as such corporation acquire title to real estate in this state, and subsequently agree to separate and form two or more separate corporations under the laws of the state, either corporation, after such separate organization, may file its petition, under this chapter, for partition of such property so acquired and held. [62 v. 142, S. & S. 506.]

Partition of property belonging to religious societies.

SEC. 23. When two or more religious societies or congregations have, by gift or purchase, acquired land upon which to erect a house of public worship, and other buildings for church or school purposes, and for a cemetery, in common, and either of such societies or congregations desires to abandon the joint use of such house of public worship, or other erections, it may commence an action for the partition of the use of such common property, except the cemetery, which may continue to be used in common. [56 v. 67, § 1, S. & C. 371.]

When such partition can be made, and effect thereof.

SEC. 24. If the court find that partition, in cases mentioned in the last section, can be made in such manner as to occasion no confusion or inconvenience to either party in the separate use of the common property, it may order partition thereof to be made; it shall specify in the judgment for what purpose partition of the use is made, and how and for what purpose the use of the premises allotted to each party shall be occupied; and in no case shall the same or any part thereof be occupied for any other purpose than the erection of a house of worship, and other erections connected therewith. [56 v. 67, §§ 2, 3, 4, S. & C. 371.]

Costs and expenses to be equitably taxed.

SEC. 25. The court, having regard to the interest of the parties, and the benefit each may derive from the partition, and according to equity, shall tax the costs and expenses which accrue in the action, including reasonable counsel fees, which shall be paid to plaintiff's counsel, unless the court award some part thereof to other counsel for service in the case for the common benefit of all the parties; and execution may issue therefor as in other cases. [29 v. 254, § 16, S. & C. 899.]

CHAPTER 10.

REAL ACTIONS.

SUBDIVISION I. *To quiet title and recover possession.*

SUBDIVISION II. *Occupying claimants.*

SUBDIVISION III. *To complete real contracts.*

SUBDIVISION IV. *To sell entailed and other estates.*

SUBDIVISION I.

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SUBDIVISION I. TO QUIET TITLE AND RECOVER POSSESSION.

Action to quiet title.

SECTION 1. An action may be brought by a person in possession, by himself or tenant, of real property, against any

person who claims an estate, or interest therein, adverse to him, for the purpose of determining such adverse estate or interest. [Civil Code, § 557, 67 v. 116.]

Vendee may recoup amount of liens and incumbrances.

SEC. 2. In actions for the recovery of purchase money of real estate, by vendor against vendee, it shall be competent for such vendee, notwithstanding his continued possession, to set up, by way of counter-claim, any breach of the covenants of title acquired by him from the plaintiff, and to make any person claiming an adverse estate or interest therein, party to the action; and upon the hearing he shall be entitled to recoup, against the plaintiff's demand, the present worth of any existing lien or incumbrance thereon; and if the adverse estate or interest of the claimant is an estate in reversion or remainder, or contingent upon a future event, the court may order the vendee, with his assent, to surrender the possession to his vendor, upon the repayment of so much of the purchase money as has been paid thereon, with interest, or direct the payment of the purchase money claimed in the action, upon the plaintiff's giving bond in double the amount thereof, with two or more sureties, to be approved by the court, for the payment of the same, with interest, if the defendant or his privies be subsequently evicted by reason of the defect. [Civil Code, § 557, 67 v. 116.]

Petition in action for land.

SEC. 3. In an action for the recovery of real property, it shall be sufficient if the plaintiff state in his petition that he has a legal estate therein, and is entitled to the possession thereof, describing the same as required by section thirty-nine, chapter seven, division two of this title, and that the defendant unlawfully keeps him out of the possession. It shall not be necessary to state how the plaintiff's estate or ownership is derived. [Civil Code, § 558, S. & C. 1119.]

The answer in such case.

SEC. 4. It shall be sufficient, in such action, if the defendant in his answer deny, generally, the title alleged in the petition, or that he withholds the possession; but if he deny the title of the plaintiff, possession by the defendant shall be taken as admitted. When he does not defend for the whole premises, the answer shall describe the particular part for which defense is made. [Civil Code, § 559, S. & C. 1122.]

Petition by tenant in common against co-tenant.

SEC. 5. In an action by a tenant in common of real property against a co-tenant, the plaintiff must state, in addition to what is required in section three of this chapter, that the defendant either denied the plaintiff's right, or did some act amounting to such denial. [Civil Code, § 560, S. & C. 1122.]

The recovery when right terminates during the action.

SEC. 6. In an action for the recovery of real property, when the plaintiff shows a right to recover at the time the action was commenced, but his right has terminated during the pendency of the action, the verdict and judgment must be according to the fact, and the plaintiff may recover for withholding the property. [Civil Code, § 561, S. & C. 1122.]

Parties may have benefit of occupying claimant law.

SEC. 7. Parties in an action for the recovery of real property may avail themselves, if entitled thereto, of the benefit of the statutes for the relief of occupying claimants of land. [Civil Code, § 564, S. & C. 1122.]

SUBDIVISION II. OCCUPYING CLAIMANTS.

In what cases occupying claimant to be paid for improvements.

SEC. 8. A person in the quiet possession of lands or tenements, and claiming to own the same, who has obtained title to and is in possession of the same without fraud or collusion on his part, shall not be evicted or turned out of possession, by any person who sets up and proves an adverse and better title, until the occupying claimant, or his heirs, are fully paid the value of all lasting and valuable improvements made on the land by him, or by the person under whom he holds, previous to receiving actual notice, by the commencement of suit on such adverse claim whereby such eviction may be effected, unless such occupying claimant refuse to pay to the person so setting up and proving an adverse and better title, the value of the land, without improvements made thereon as aforesaid, upon demand of the successful claimant, or his heirs, as hereinafter provided, when—

1. Such occupying claimant holds a plain and connected title, in law or equity, derived from the records of a public office; or,

2. Holds the same by deed, devise, descent, contract, bond, or agreement, from and under a person claiming title as aforesaid, derived from the records of a public office, or by deed duly authenticated and recorded; or,

3. Under sale on execution, against a person claiming title as aforesaid, derived from the records of a public office, or by deed duly authenticated and recorded; or,

4. Under a sale for taxes authorized by the laws of this state, or the laws of the territory north-west of the river Ohio; or,

5. Under a sale and conveyance made by executors, administrators, or guardians, or by any other person or persons, in pursuance of an order of court, or decree in chancery, where lands are or have been directed to be sold. [29 v. 261, § 1, S. & C. 881.]

Title under a sale for taxes sufficient to protect occupant.

SEC. 9. The title by which the successful claimant succeeds against the occupying claimant, in all cases of lands sold for taxes by virtue of any law of this state, or the laws of the territory north-west of the river Ohio, shall be considered an adverse and better title, under the provisions of the last section, whether it be the title under which the taxes were due, and for which the land was sold, or any other title or claim; and the occupying claimant holding possession of land so sold for taxes, having the deed of a collector of taxes or county auditor therefor, or a certificate of such sale from a collector of taxes or a county treasurer,

or claiming under the person who holds such deed or certificate, shall be considered as having sufficient title to the land to demand the value of improvements under the provisions of the last section. [29 v. 261, § 2, S. & C. 881.]

Entry of claim for improvement, and drawing jury.

SEC. 10. The court rendering judgment against the occupying claimant, in any case provided for by this subdivision, shall, at the request of either party, cause a journal entry thereof to be made. And the sheriff and clerk of the court, when thereafter required by either party, shall meet, and draw from the jury box the names of twelve men returned to serve as jurors, in the same manner as they are required by law to draw a jury in other cases; and immediately thereupon the clerk shall issue an order to the sheriff, under the seal of the court, setting forth the names of the jurors, and the duty to be performed by them. [29 v. 261, § 3, S. & C. 881.]

Duties of jury.

SEC. 11. The jury named in the order shall immediately, on being notified by the sheriff, proceed to view the premises in question, and then and there, on oath, to be administered by any competent authority, assess the value of all lasting and valuable improvements made on the lands previous to the party receiving actual notice as aforesaid of the adverse claim; and shall also assess the damages, if any, which the land has sustained by waste, together with the net annual value of the rents and profits of the lands which the occupying claimant has received after having received notice of the plaintiff's title by the service of a summons, and deduct the amount thereof from the estimated value of such lasting and valuable improvements; and the jury shall also assess the value of the land at the time judgment was rendered, without the improvements made thereon, or damages sustained by waste. [29 v. 261, § 4, S. & C. 881.]

Sheriff to summon talesmen.

SEC. 12. If any juror named in the order is absent from the county, of kin to either party, or from any other cause disqualified or unable to serve upon the jury, the sheriff may summon a talesman as in other cases, who shall be qualified and shall serve as if originally drawn and named in the order. [29 v. 261, § 5, S. & C. 881.]

Verdict—how made out, and how and when returned.

SEC. 13. The jury shall sign and seal the assessments and valuations, and deposit the same with the clerk of the court, before the first day of the next term of the court after the order is made. If either party be aggrieved by any such assessment or valuation, he may apply to the court, at the term to which the proceedings are returned; and the court may, upon good cause shown, set aside such assessment or valuation, order a new valuation, and appoint another jury, as hereinbefore provided, which shall proceed in the same manner as hereinbefore directed. [29 v. 261, § 6, S. & C. 881.]

Judgment and execution on verdict for plaintiff.

SEC. 14. If the jury report a sum in favor of the plaintiff in ejectment, on the assessment and valuation of the valuable and lasting improvements, the assessment of damages for waste, and the net annual value of the rents and profits,

the court shall render a judgment therefor, without pleadings, and issue execution thereon as in other cases; or, if s much excess be reported, then, and in either case, the plaintiff in ejectment shall be thereby barred from having or maintaining an action for mense profits. [29 v. 261, § 7, S. & C. 881.]

Proceedings if verdict is for occupying claimant.

SEC. 15. If the jury report a sum in favor of the occupying claimant, on the assessment and valuation of the valuable and lasting improvements, deducting therefrom the damages, if any, sustained by waste, together with the net annual value of the rents and profits which the defendant has received after the commencement of the action, the successful claimant, or his heirs, or, if they be minors, their guardians, may either demand of the occupying claimant the value of the land without the improvements so assessed, and tender a deed of the land to the occupying claimant, or may pay the occupying claimant the sum so allowed by the jury in his favor, within such reasonable time as the court shall allow. [29 v. 261, § 8, S. & C. 881.]

When a writ of possession will issue.

SEC. 16. If the successful claimant, his heirs, or their guardians, elect to pay, and do pay, to the occupying claimant, the sum reported in his favor by the jury, within the time allowed by the court, then a writ of possession shall issue in favor of the successful claimant, his heirs, or their guardians. [29 v. 261, § 9, S & C. 881.]

When claimant elects to receive value of land.

SEC. 17. If the successful claimant, his heirs, or their guardians, elect to receive the value of the land without improvements, so assessed to be paid by the occupying claimant, and tender a general warranty deed of the land conveying such adverse or better title, within the time allowed by the court for the payment of the money, and the occupying claimant refuse or neglect to pay the same to the successful claimant, his heirs, or their guardians, within the time limited, a writ of possession shall be issued in favor of the successful claimant, his heirs, or their guardians. [29 v. 261, § 10, S. & C. 881.]

When occupant may have action for title.

SEC. 18. The occupying claimant, or his heirs, shall not be evicted from the possession of such land, except as is provided in the last two sections, where an application is made for the value of improvements. And in all cases where the occupying claimant, or his heirs, pay into court the value of the land, without improvements, within the time allowed by the court, when an election has been made by the successful claimant, his heirs, or their guardians, to surrender land under the provisions of this subdivision, such occupant or his heirs may, at any time after such payment is made, bring an action in the court where judgment of eviction was obtained, and obtain judgment for the title of the land, if the same had not been previously conveyed to such occupant as aforesaid. [29 v. 261, § 11, S. & C. 881.]

SUBDIVISION III. TO COMPLETE REAL CONTRACTS.

When the survivors of vendors of land may be authorized to convey.

SEC. 19. When two or more persons who own an interest in land become bound in writing for the sale and conveyance thereof, and one of them dies before the land is conveyed, the survivor or survivors may, by petition against the purchaser, and the heirs or devisees of such deceased party, be authorized to complete such contract. [29 v. 258, § 1, S. & C. 259.]

Petition in such case—what to contain.

SEC. 20. The petition must set forth the names of all the contracting parties, describe the lands contracted for, state the time the contract was made, that the contract has been fully performed by the purchaser, and have annexed a copy of the contract. [29 v. 258, § 3, S. & C. 259.]

Judgment of the court, and deed.

SEC. 21. If the court find the allegations of the petition to be true, it may make an order authorizing and empowering the survivors to complete the contract by conveying the land; and the deed shall recite the order, and shall convey as complete and perfect a title, and have the same effect, as if executed by all the owners. [29 v. 258, § 2, S. & C. 259.]

Action to complete contract for land.

SEC. 22. When a person who has entered into a written contract for the sale and conveyance of an interest in land dies before the completion thereof, and his executor, administrator, or other legal representative, desires to complete the contract, he may file a petition therefor in the court of common pleas or probate court of the county in which the land, or any part thereof, is situated; if the petition be filed in the probate court, service may be made therein as in civil actions; and the heirs at law, devisees, or other legal representatives of the deceased vendor, when not plaintiffs, must be made defendants in the action. [29 v. 258, § 5, S. & C. 259.]

When court may order conveyance: deed, and its effect.

SEC. 23. The court, after causing to be secured to and for the benefit of the estate of the deceased, its just part and proportion of the consideration of the contract, may authorize the executor, administrator, or other legal representative, to complete the contract, and to execute a deed for and on behalf of the heirs at law to the purchaser, which shall recite the order, and be as binding on the heirs at law, and all other persons interested, as if it had been made by the deceased in his lifetime. [29 v. 258, §§ 6, 8, S. & C. 259.]

Heirs of deceased purchaser may have like action.

SEC. 24. The heirs at law, or devisees, of a person who purchased an interest in land by written contract, and died before conveyance thereof to him, may compel such conveyance as the deceased might have done. [29 v. 258, § 7, S. & C. 259.

SUBDIVISION IV. TO SELL ENTAILED AND OTHER ESTATES.

Who may obtain a sale of entailed and certain other estates.

SEC. 25. Courts of common pleas, in an action by the tenant in tail or for life, or by the grantee or devisee of a qualified or conditional fee, or of any other qualified, conditional, or determinable interest, or by a person claiming

under such tenant, grantee, or devisee, or by the trustees or beneficiaries, if the estate is held in trust, may authorize the sale of any estate, whether the same was created by will, deed, or contract, or came by descent, when satisfied that a sale thereof would be for the benefit of the person holding the first and present estate, interest, or use, and do no substantial injury to the heirs in tail, or others in expectancy, succession, reversion, or remainder; but this section shall not extend to estates in dower or by courtesy. [56 v. 154, § 1, S. & C. 550; 61 v. 80, §§ 1, 2, S. & S. 346; 62 v. 184, § 1, S. & S. 347.]

Requisites of petition therefor, and who to be made defendants.

SEC. 26. The petition shall contain a description of the estate to be sold, a clear statement of the interest of the plaintiff therein, and a copy of the will, deed, or other instrument of writing by which the estate is created. All persons in being who are interested in the estate, or who may, by the terms of the will, deed, or other instrument creating the entailment, or other estate, thereafter become interested therein as heir, reversioner, or otherwise, shall be made parties to the petition; and if the names of any persons who ought to be made parties are unknown to the plaintiff, or if the residence of any such party is unknown to the plaintiff, the fact shall be verified by the affidavit of the plaintiff, and the sale may be ordered notwithstanding such names and residences are unknown. [56 v. 154, § 2, S. & C. 550.]

Order for sale, and effect of sale.

SEC. 27. If, upon the hearing of the petition, it be made to appear to the court, by satisfactory proof, that a sale of the estate would be for the benefit of the tenant in tail or for life, and do no substantial injury to the heirs in tail, or others in expectancy, succession, reversion, or remainder, the court shall direct a sale of the estate to be made, and the manner thereof, and shall appoint some suitable person or persons to make the same; and such sale shall vest the estate sold in the purchaser, freed from the entailment, limitation, or condition. [56 v. 154, § 3, S. & C. 550.]

A sale may be had by consent.

SEC. 28. All parties in interest may appear voluntarily, and consent in writing to such sale; and testamentary guardians, and guardians appointed by the court of probate, may assent, in the place of their wards, to the sale. [56 v. 154, § 4, S. & C. 550.]

Report and confirmation of sale, and deed.

SEC. 29. All such sales shall be reported to the court authorizing the same; and if, on examination thereof, it appear that the sale was fairly conducted and made, and that the price obtained is the reasonable value of the estate sold, the court shall confirm the sale, and direct a deed of conveyance of the premises sold to be made to the purchaser, on payment of the purchase money, or on securing the payment thereof in such manner as shall be approved by the court. [56 v. 154, § 5, S. & C. 550.]

How proceeds of sale disposed of.

SEC. 30. All money arising from sales under this subdivision shall, for purposes of descent, succession, reversion, or remainder, have the same character, and be governed by the same principles, as the estate sold, and shall pass according to the terms of the deed, will, or other instrument creating the estate. [56 v. 154, § 6, S. & C. 550; 61 v. 80, § 1, S. & S. 346.]

How proceeds may be invested.

SEC. 31. Money arising from such sales shall, under the direction and approval of the court, be invested in the certificates of the funded debt of this state or of the United States, or in bonds secured by mortgage on unincumbered real estate situated in the proper county, of double the value of the money secured thereby, exclusive of buildings and other improvements, and of timber, mines, and minerals; or the court may order the same to be reinvested in other real estate within this state, under such restrictions as it may prescribe, which investment shall be reported to the court, and subject to its approval and confirmation; the real estate in which the money is reinvested shall, for purposes of descent, succession, reversion, or remainder, have the same character, and be governed by the same principles, as the estate sold, and shall pass according to the terms of the deed, will, or other instrument creating the estate sold; and the court shall appoint competent trustees to invest the money, and manage the same, who shall, from time to time, report to the court their proceedings, and the condition of the fund. The court shall require of such trustees security for the faithful discharge of their duty; may, from time to time, require additional security; may remove such trustees for cause, or reasonable apprehension thereof; and may accept the resignation of a trustee, and fill a vacancy by a new appointment. [57 v. 25, § 7, S. & C. 550.]

Who to receive income, and pay taxes and expenses.

SEC. 32. The net income accruing from sales authorized by this subdivision shall be paid to the person or persons who would be entitled to the use or income of the estate were the same unsold; and all taxes, and the expenses of the investment and management of the fund, shall be paid by the person or persons entitled to the income thereof. [56 v. 154, § 8, S. & C. 550.]

Such estates may be leased.

SEC. 33. Upon like proceedings the court may direct that such estates be leased for a term of years, renewable or otherwise, as may appear most beneficial, and upon such terms as appear just and equitable; and the rents and profits shall be paid to the person or persons who might otherwise be entitled to the use and occupancy of the estate, or the income thereof. [56 v. 154, § 9, S. & C. 550.]

CHAPTER 11.

REPLEVIN.

SECTION
1. When possession of personal property may be recovered.
2. Affidavit for order of delivery.
3. What order for delivery shall contain, and to whom directed.
4. When order returnable.
5. How order executed.
6. Plaintiff to give an undertaking.
7. Duty of officer when property consists of heir-looms, etc.
8. How value of property fixed.
9. Duty of officer with respect to property, and liability.
10. Qualifications of sureties—exceptions.
11. Proceedings when plaintiff fails to prosecute.
12. Proceedings when jury find for plaintiff, and on default.
13. Proceedings when jury find for defendant.
14. When property not taken, or returned, action may proceed as one for damages.
15. Order for delivery may issue to different counties.
16. When officer may break open building.
17. When action may be brought on the undertaking.
18. When order may be set aside at clerk's cost.

When possession of personal property may be recovered.

SECTION 1. The possession of specific personal property may be recovered in an action as provided in this chapter. [Civil Code, § 174, S & C. 996.]

Affidavit for order of delivery.

SEC. 2. An order for the delivery of property to the plaintiff shall be issued by the clerk of the court in which the action is brought, when there is filed in his office an affidavit of the plaintiff, his agent, or attorney, showing—

1. A description of the property claimed.

2. That the plaintiff is the owner of the property, or has an interest therein; and if the ownership or interest is special or partial, the facts shall be stated.

3. That the property is wrongfully detained by the defendant.

4. That it was not taken on process issued against the plaintiff, nor for a tax; or if taken on such process that the property was exempt from execution expressly, or upon demand or selection by the plaintiff. [Civil Code, § 175, S. & S. 545.]

What order for delivery shall contain, and to whom directed.

SEC. 3. The order for the delivery of the property to the plaintiff shall be addressed and delivered to the sheriff. It shall contain the names of the parties, and the court in which the action is brought, and the sheriff shall be thereby commanded to take the property, deliver it to the plaintiff, and make return of the order on a day to be named therein. [Civil Code, § 176, S. & C. 998.]

When order returnable

SEC. 4. The return day of the order of delivery shall be the same as that of the summons. [Civil Code, § 177, S. & C. 998.]

How order executed.

SEC. 5. The sheriff shall execute the order by taking the property therein mentioned. He shall also deliver a copy of the order to the person charged with the unlawful detention of the property, or leave such copy at his usual place of residence. [Civil Code, § 178, S. & C. 999.]

Plaintiff to give an undertaking.

SEC. 6. The sheriff shall, except as provided in the next section, deliver the property so taken to the plaintiff, his agent or attorney, where there is executed, by sufficient surety of the plaintiff, a written undertaking to the defendant, in at least double the value of the property taken, to the effect that the plaintiff shall duly prosecute the action, and pay all costs and damages which may be awarded against him. The undertaking shall be returned with the order. [Civil Code, § 179, S. & S. 546.]

Duty of officer when property consists of heirlooms, etc.

SEC. 7. When the property replevied consists of an heirloom, personal keepsake, or other article, the value of which consists in whole or in part in its being a relic, model, gift, family picture, painting or rare production of art or nature, and not wholly in its general marketable character, the sheriff shall retain and safely keep the same, subject to the order of the court, if the defendant, his agent or attorney, within ten days after the same is replevied, serve a written notice upon the officer that he will demand the return of the same upon the final trial of the case, and that he will, at the next term of the court, move for an order requiring the officer to retain the property, subject to the final order of the court; and if the defendant fail to give the notice aforesaid, or the court, upon application of either party, refuse to order the officer to retain the property, for the reason that it does not belong to one or more of the kinds of personal property aforesaid, the officer shall deliver the property to the plaintiff, his agent or attorney, upon the execution of an undertaking, as provided in the last section, to be filed with the clerk of the court within ten days from the expiration of the time to give the notice, or in case the notice is given, within ten days after the refusal of the court to order the officer to retain the property. [Civil Code, § 179, S. & S. 546.]

How value of property fixed.

SEC. 8. For the purpose of fixing the amount of the undertaking, the value of the property taken shall be ascertained by the oath of two or more responsible persons, whom the sheriff shall swear truly to assess the value thereof. [Civil Code, § 180, S. & C. 999.]

Duty of officer with respect to property, and liability.

SEC. 9. If the undertaking required by section six be not given within twenty-four hours after the property is taken, or after the right first accrues to the plaintiff to receive the property from the officer on executing the proper undertaking, the officer shall return the property to the defendant; and if the officer deliver any property so taken to the plaintiff, his agent or attorney, or keep the same from the defendant, without taking such security within the time and in the manner aforesaid, or if he take insufficient security, he shall be liable in damages. [Civil Code, § 181, 67 v. 112.]

SEC. 10. The defendant may, within twenty-four hours from the time the undertaking referred to in the last section is given by the plaintiff, give notice to the sheriff that he excepts to the sufficiency of the surety. If he fail to do so,

Qualifications of sureties—exceptions.

he shall be deemed to have waived all objections to them. When the defendant excepts, the surety must justify upon notice, as bail on arrest. The officer shall be responsible for the sufficiency of his surety until the objection thereto is waived as above provided, or until they justify. The property shall be delivered to the plaintiff when the undertaking required by section six is given. [Civil Code, § 182, S. & C. 999.]

Proceedings when plaintiff fails to prosecute.

SEC 11. When judgment is rendered against the plaintiff on demurrer, or he fails to prosecute his action to final judgment, the court shall, on application of defendant, assess to defendant proper damages, including damages for the right of property or possession, or both, if he prove himself entitled thereto, or cause the same to be done by a jury, for which, with costs of suit, the court shall render judgment for the defendant. [Civil Code, § 183, S. & S. 547.]

Proceedings when jury finds for plaintiff, and on default.

SEC. 12. When the property is delivered to the plaintiff, or remains in the hands of the sheriff, as provided in section seven, if the jury, upon issue joined, find for the plaintiff, and upon inquiry of damages upon a default, they shall assess adequate damages to the plaintiff for the illegal detention of the property, for which, with costs of suit, the court shall render judgment for the plaintiff. [Civil Code, §§ 184, 185, S. & S. 548, S. & C. 1001.]

Proceedings when jury finds for defendant.

SEC. 13. When the property is delivered to the plaintiff, or remains in the hands of the sheriff, as provided in section seven, if the jury, upon issue joined, find for the defendant, they shall also find whether the defendant had the right of property, or the right of possession only, at the commencement of the suit; and if they find either in his favor, they shall assess to him such damages as they think right and proper, for which, with costs of suit, the court shall render judgment for the defendant. [Civil Code, § 184, S. & S. 548.]

When property not taken, or returned, action may proceed as one for damages.

SEC. 14. When the property claimed is not taken, or is returned to the defendant by the sheriff, for want of the undertaking required by section six, the action may proceed as one for damages only, and the plaintiff shall be entitled to such damages as are right and proper; but if the property be returned for want of the undertaking, the plaintiff shall pay all costs made by taking the same. [Civil Code, § 186, S. & C. 1001.]

Order for delivery may issue to different counties.

SEC. 15. An order for the delivery of the property claimed may be directed to any county; and several orders may issue at the same time, or successively, at the option of the plaintiff; but only one of them shall be taxed in the costs, unless otherwise ordered by the court. [Civil Code, § 187, S. & C. 1001.]

When officer may break open building.

SEC. 16. The officer, in the execution of the order of delivery, may break open any building or inclosure in which the property claimed, or any part thereof, is concealed, but not until he has been refused an entrance into the building

or inclosure, and the delivery of the property, after having demanded the same. [Civil Code, § 188, S. & C. 1001.

When action may be brought on the undertaking.

SEC. 17. No suit shall be instituted on the undertaking given under section six, until an execution issued on a judgment in favor of the defendant in the action has been returned unsatisfied. [Civil Code, § 189, S. & C. 1001.]

When order may be set aside at clerk's desk.

SEC. 18. An order for the delivery of property issued under section two, without the affidavit required thereby, shall be set aside at the cost of the clerk who issued it, and such clerk, as well as the plaintiff, shall also be liable in damages to the party injured. [Civil Code, § 190, S. & C. 1001.]

CHAPTER 12.

SURETIES—RIGHTS AND REMEDIES OF.

SECTION
1. Certain sureties cannot waive their rights.
2. Certain sureties may require creditor to sue.
3. Representatives of sureties may have benefit of last section.
4. Limitation of the last two sections.
5. Sureties of county officers may apply to be discharged.
6. Duty of county commissioners in such case.
7. Sureties of constable or marshal may apply to be discharged.
8. Proceedings by trustees or council in such case.
9. Sureties of treasurers of school fund may apply to be discharged.
10. Proceedings by board of education in such case.
11. Sureties of township officers may apply to be discharged.
12. Proceedings by township trustees in such case.
13. Sureties may, by action, compel principal to pay debt.
14. When surety may have action for indemnity before debt due.
15. May have any provisional remedy.

Certain sureties cannot waive their rights.

SECTION 1. In contracts for the payment of money to banks or bankers, sureties in fact, known to the parties to be such at the time such contracts were made, may be proved, and shall be considered in all courts to be sureties, and have all the privileges of sureties, anything in the contract expressed to the contrary notwitstanding. [43 v. 67, § 4, S. & C. 159.]

Certain sureties may require creditors to sue.

SEC. 2. A person bound as surety in a written instrument for the payment of money, or other valuable thing, may, if a right of action accrue thereon, require his creditor, by notice in writing, to commence an action on such instrument forthwith, against the principal debtor; and unless the creditor commence such action within a reasonable time thereafter, and proceed with due diligence, in the ordinary course of law, to recover judgment against the principal

debtor for the money or other valuable things due thereby, and to make, by execution, the amount thereof, the creditor or the assignee of such instrument, so failing to comply with the requisition of such surety, shall thereby forfeit the right which he would otherwise have to demand and receive of such surety the amount due thereon. [61 v. 19, § 1, S. & S. 741.]

Representatives of sureties may have benefit of last section.

SEC. 3. The executor or administrator of a surety so bound may, in like manner, make such requisition of the creditor, or his executor or administrator, as provided in the last section; and in case of failure of the creditor, or his executor or administrator, to proceed, as therein required, the executor or administrator, if he make the requisition, shall have the same relief as is therein provided for a surety. [61 v. 19, § 2, S & S. 741.]

Limitation of the last two sections.

SEC. 4. Nothing in the last two sections contained shall be so construed as to affect bonds required by law to be given by guardians, executors, administrators, trustees of an express trust, public officers, or any bond or undertaking required by law to be given in an action or legal proceeding, in any court of this state. [61 v. 19, §§ 3, 4, S. & S. 741.]

Sureties of county officers may apply to be discharged.

SEC. 5. A surety of a sheriff, auditor, probate judge, county treasurer, clerk of the court of common pleas, recorder, or coroner, may at any time notify the county commissioners, by giving at least five days' written notice that he is unwilling to continue as surety for such officer, and will, at a time to be therein named, make application to the commissioners to be released from further liability upon his bond; and he shall also give at least three days' written notice to such officer of the time and place at which such application will be made. [62 v. 69, § 1, S. & S. 742.]

Duty of county commissioners in such case.

SEC. 6. The county commissioners, upon such notice being given, shall hear the application, and if, in their opinion, there is good reason therefor, shall require such officer to give a new bond, conditioned according to law, to their satisfaction, within such reasonable time as they may direct; and if such officer fail to execute such bond, the office shall be deemed vacant, and shall be immediately filled as other vacancies therein; but such original sureties shall not be released or discharged until the filing of the new bond, or the expiration of the time allowed therefor, and shall be liable only for the official acts of such officer from the time of the execution of the original bond to the filing of the second bond, or the expiration of the time allowed therefor; but the costs of such application shall be paid by the surety who makes the same. [62 v. 69, § 2, S. & S. 742.]

Sureties of constable or marshal may apply to be discharged.

SEC. 7. If a constable, or the marshal of a municipal corporation, neglect or refuse, on demand made for that purpose by a person entitled thereto, his agent or attorney, to pay all money by him received in his official capacity for the use of such person, a surety of such constable or marshal

may give notice to the trustees of the township, or the council of the corporation, in which such constable or marshal resides, of his refusal or neglect to pay over money by him collected by virtue of his office, and that he is unwilling to continue as his surety. [61 v. 103, § 1, S. & S. 743.]

Proceedings by trustees or council in such case.

SEC. 8. The trustees or council, as the case may be, upon such notice being given, shall immediately inform the constable or marshal, in writing, of the refusal of his surety to continue as such, and that he is required to give a new undertaking, conditioned according to law; and if such constable or marshal shall give such undertaking, to the satisfaction of the trustees or council, within ten days after receiving such notice, the sureties upon the first undertaking shall be released and exonerated from all further liability thereon; and if the constable or marshal fail to give a new undertaking within ten days after having received such written notice, such failure shall be deemed and taken as a resignation of his office, and the trustees or council shall proceed to fill such vacancy as is provided in other cases. [61 v. 103, § 2, S. & S. 743.]

Sureties of treasurer of school fund may apply to be discharged.

SEC. 9. A surety of the treasurer of school funds in any school district organized under the provisions of law, may at any time notify the board of education of the proper district, by giving at least five days' notice in writing that he is unwilling to continue as surety for such treasurer, and will, at a time therein named, make application to the board of education to be released from further liability upon his bond; and he shall also give at least three days' notice in writing to such treasurer, of the time and place at which the application will be made. [70 v. 195, § 48.]

Proceedings by board of education in such case.

SEC. 10. The board of education, upon such notice being given, shall hear the application, and if, in their opinion there is good reason therefor, shall require the treasurer to give a new bond, conditioned according to law, and to the satisfaction of the board, within such time as they may direct; and if the treasurer fail to execute such bond, the office shall be deemed vacant, and shall be immediately filled as other vacancies therein; but such original sureties shall not be released or discharged until the filing of the new bond, or the expiration of the time allowed therefor. The cost of such application shall be paid by the person making the same. [70 v. 195, § 48.]

Sureties of township officers may apply to be discharged.

SEC. 11. A surety of a justice of the peace, constable, township treasurer, or any township officer, may at any time notify the township trustees, by giving at least five days' notice in writing, that he is unwilling to continue as surety for such officer, and will, at a time therein named, make application to the township trustees to be released from further liability upon his bond; and he shall also give at least three days' notice in writing to such officer, of the time and place at which the application will be made. [52 v. 127, § 1, S. & C. 809; 64 v. 13, § 1, S. & S. 743.]

Proceedings by township trustees in such cases.

SEC. 12. The township trustees, upon such notice being given, shall hear the application, and if they find that such officer neglects or refuses, on demand by a person entitled thereto, his agent or attorney, to pay over all money by him received in his official capacity for the use of such person, or if, in their opinion, there is other good reason therefor, they shall require such officer to give a new bond, conditioned according to law, and to the satisfaction of the trustees, within such time as they may direct; and if the officer fail to execute such bond, the office shall be deemed vacant, and shall be immediately filled as other vacancies therein; but such original sureties shall not be released or discharged until the filing of the new bond, or the expiration of time allowed therefor, but they shall be liable only for the official acts of such officer from the time of the execution of the original bond to the filing of the new bond, or the expiration of the time allowed therefor; and the costs of the application shall be paid by the person making the same. [52 v. 127, § 2, S. & C. 809; 64 v. 13, § 2, S. &. S. 743.]

Sureties may, by action, compel principal to pay debt.

SEC. 13. A surety may maintain an action against his principal, to compel him to discharge the debt or liability for which the surety is bound, after the same becomes due. [Civil Code, § 500, S. & C. 1095.]

When surety may have action for indemnity before debt due.

SEC. 14. A surety may maintain an action against his principal, to obtain indemnity against the debt or liability for which he is bound, before it is due, whenever any of the grounds exist upon which, by the provisions of this title, an order may be made for arrest or for an attachment. [Civil Code, § 501, S. & C. 1097.]

May have any provisional remedy.

SEC. 15. In such action, the surety may obtain any of the provisional remedies mentioned in division six of this title, upon the grounds and in the manner therein provided. [Civil Code, § 502, S. & C. 1098.]

CHAPTER 13.

TAXES AND ASSESSMENTS—RELIEF AGAINST ILLEGAL.

SECTION
1. Jurisdiction of courts of common pleas and superior courts.
2. Parties to actions to enjoin levy.
3. Parties to actions to enjoin collection, and to recover back.
4. Amount admitted must be paid or tendered, and undertaking given.

Jurisdiction of courts of common pleas and superior courts.

SECTION 1. Courts of common pleas and superior courts shall have jurisdiction to enjoin the illegal levy of taxes and assessments, or the collection of either, and of actions to recover back such taxes or assessments as have been collected, without regard to the amount thereof; but no recovery shall be had unless the action be brought within one year after

the taxes or assessments are collected. [53 v. 178, §§ 1, 2, S. & C. 1151.]

Parties to actions to enjoin levy.

SEC. 2. Actions to enjoin the illegal levy of taxes and assessments must be brought against the corporation or person for whose use and benefit the levy is made; and if the levy would go upon the county duplicate, the county auditor must be joined in the action. [53 v. 178, § 2, S. & C. 1151.]

Parties to actions to enjoin collection, and to recover back.

SEC. 3. Actions to enjoin the collection of taxes and assessments must be brought against the officer whose duty it is to collect the same. Actions to recover back taxes and assessments must be brought against the officer who made the collection, or, if he is dead, against his personal representative; and when they were not collected on the county duplicate, the corporation which made the levy must be joined in the action. [53 v. 178, § 2, S. & C. 1151.]

Amount admitted must be paid or tendered, and undertaking given.

SEC. 4. If the plaintiff in an action to enjoin the collection of taxes or assessments admit a part thereof to have been legally levied, he must first pay or tender the sum admitted to be due; and, if an order of injunction be allowed, an undertaking must be given as in other cases; and the injunction shall be a justification of the officer charged with the collection of such taxes or assessments for not collecting the same. [53 v. 178, § 3, S. & C. 1151.]

CHAPTER 14.

TO CHANGE NAME.

SECTION
1. What names may be changed.
2. Proceeding to change name of person.
3. Proceeding to change name of town, village, or hamlet.
4. Proceedings to change name of corporation.
5. Copy of order to be filed, and publication made.
6. Effect of change of name of corporation.

What names may be changed.

SECTION 1. The names of persons, the names of towns, villages, and hamlets, and the names of companies or associations incorporated in this state, may be changed in the manner provided in this chapter. [40 v. 28, § 1, S. & C. 1138; 51 v. 293, § 1, S. & C. 317; 50 v. 274, § 77, S. & C. 309.]

Proceeding to change name of person.

SEC. 2. A person desiring to change his name may file a petition in the court of common pleas of the county in which he resides, setting forth that he has been a bona fide resident of such county for at least one year prior to the filing of the petition, the cause for which the change of name is sought, and the new name asked for; and the court, upon being satisfied, by proof in open court, of the truth of the facts set forth in the petition, that there exists reasonable and proper cause for changing the name of the petitioner, and that thirty days' notice of the intended application has been duly given

in a newspaper of general circulation in such county, may order such change of name. [40 v. 28, § 2, S. & C. 1138.]

Proceeding to change name of town, village, or hamlet.

SEC. 3. Not less than twelve freeholders of the vicinity may file a petition in the court of common pleas of the county, for the change of the name of any town, village, or hamlet in such county, setting forth the reason why such change of name is desirable, and the name proposed to be substituted; and the court, upon being satisfied by proof, that the prayers of the petitioners is just and reasonable, that notice as required in the last section has been given, that at least three-fourths of the inhabitants of such town, village, or hamlet desire such change, and that there is no other town, village, or hamlet in this state of the same name as that which is prayed for, may order such change of name. [40 v. 28, § 3, S. & C. 1138.]

Proceeding to change name of corporation.

SEC. 4. The directors or trustees of a corporation incorporated in this state, may file a petition in the court of common pleas of the county in which its principal office is located, or, if it has no principal office, in the county in which it is situated, for a change of name of such corporation; and the court, upon being satisfied that thirty days' notice of the object and prayer of the petitioners has been given, by publication in a newspaper of general circulation in the county, and upon good cause shown, shall order the change of name as prayed for. [51 v. 293, §§ 1, 2, S. & C. 317; 50 v. 274, § 77, S. & C. 309.]

Copy of order to be filed, and publication made.

SEC. 5. A copy of the order of the court shall be filed with the secretary of state, if the certificate of incorporation was filed in his office, or with the recorder of the county, if such certificate was filed in his office; and in either case, a copy of the order shall be published in some newspaper of general circulation in the county. [51 v. 293, § 3, S. & C. 317; 50 v. 274, § 77, S. & C. 309.]

Effect of change of name of corporation.

SEC. 6. When the provisions of the last section have been complied with, such corporation shall thereafter be known by such new name, and shall have all the powers, and be subject to the same restrictions, as if no change of name had been made; and no such change of name shall affect the rights of such corporation, or of any individual, or other corporation. [51 v. 293, § 4, S. & C. 317; 50 v. 274, § 77, S. & C. 309.]

CHAPTER 15.

TO CONTEST WILL.

SECTION
1. Any person interested may contest will or codicil.
2. The necessary parties to the action.
3. What the clerk must certify to the probate court.
4. An issue must be made up; verdict, and its effect.
5. Order of probate is prima facie evidence.
6. When the testimony upon the probate is competent.
7. Appeal, and proceedings thereon.
8. Limitation and saving to persons under disability.

Any person interested may contest will or codicil.

SECTION 1. A person interested therein may contest the validity of a will or codicil admitted to probate in the probate court, or court of common pleas on appeal, in a civil action in the court of common pleas of the county in which such probate was had. [51 v. 167, § 24, S. & C. 1216.]

The necessary parties to the action.

SEC. 2. All the devisees, legatees, and heirs of the testator, and other interested persons, including the executor or administrator, must be made parties to the action.

What the clerk must certify to the probate court.

SEC. 3. Upon the filing of the petition the clerk shall certify that fact to the probate court in which the will is recorded, and the probate judge shall proceed as provided in title two. [51 v. 167, § 24, S. & C. 1216.]

An issue must be made up; verdict, and its effect.

SEC. 4. An issue shall be made up, either in the pleadings or by an order on the journal, whether the writing produced is the last will or codicil of the testator, or not, which shall be tried by a jury, and unless a new trial be granted, or the cause be appealed to the district court, the verdict shall be conclusive, and the court shall enter judgment thereon, and for costs of the action. [50 v. 297, § 21, S. & C. 1618.]

Order of probate its prima facie evidence.

SEC. 5. On the trial of such issue, the order of probate shall be prima facie evidence of the due attestation, execution, and validity of the will or codicil. [50 v. 297, § 22, S. & C. 1619.]

When the testimony upon the probate is competent.

SEC. 6. A certified copy of the testimony of such of the witnesses examined upon the probate as are out of the jurisdiction of the court, dead, or have become incompetent since the probate, shall be admitted in evidence on the trial. [50 v. 297, § 23, S. & C. 1619.]

Appeal, and proceedings thereon.

SEC. 7. An appeal may be had from the judgment of the court of common pleas to the district court, as in other cases of appeal, and the district court shall, on the application of a party, direct the issue that was tried in the court below to be retried in that court, in the manner herein provided. [50 v. 297, § 24, S. & C. 1619.]

Limitation and saving to persons under disability.

SEC. 8. No action shall be commenced to contest a will or codicil unless within two years after the same was admitted to probate; but infants, married women or persons absent from the state, shall not be concluded by the verdict

and judgment in any such action; but such persons may, within two years after their respective disabilities are removed, and not thereafter, commence an action, and contest the will, as hereinbefore provided. [50 v. 297, §§ 19, 25, S. & C. 1619.]

CHAPTER 16.

TO CURE CERTAIN DEFECTS, ERRORS, AND OMISSIONS.

SECTION.
1. When court must give effect to the intention of the parties.
2. Certain errors, defects, and omissions may be corrected by action.
3. In what county petition to be filed.
4. How service to be made.
5. Judgment of the court, and its effect.
[6. Errors in deed by wife corrected.]

When court must give effect to the intention of the parties.

SECTION 1. When, [in] an instrument in writing, or in a proceeding, there is an omission, defect, or error, by reason of inadvertence of an officer, or a party, person, or body corporate, whereby the same is not in strict conformity with the laws of this state, the courts of this state may give full effect to such instrument or proceeding, according to the true and manifest intention of the parties thereto. [56 v. 40, § 1, S. & C. 1172.]

Certain errors, defects, and omissions may be corrected by action.

SEC. 2. When any such error, omission, or defect occurs in an instrument or proceeding which is required to be made a matter of record, any party, person, body corporate, or persons intending and undertaking to become a body corporate, having or claiming an interest in the correction of such error, omission, or defect, may file a petition in the court of common pleas, setting forth particularly the error, defect, or omission complained of, and asking an order for the correction thereof. [56 v. 40, § 2, S. & C. 1172.]

In what county petition to be filed.

SEC. 3. When the record to be corrected is in any way connected with a body corporate, the petition shall be filed in the county wherein the principal office of such corporation is located, and in all other cases in the county wherein the record is kept. [56 v. 40, § 3, S. & C. 1172.]

How service to be made.

SEC. 4. When the application is made by a body corporate, or by persons intending and undertaking to become a body corporate, notice of the application, specifying the error, defect, or omission complained of, and the time and place of hearing the same, shall be published for six consecutive weeks, in some newspaper of general circulation in the county where the application is made; and in all other cases service shall be made in the manner prescribed by law for making service in civil actions. [56 v. 40, § 2, S. & C. 1172.]

Judgment of the court, and its effect.

SEC. 5. The court, upon being satisfied that such mistake, error, or omission has been made, shall grant and make an order to correct the same, which order shall be filed in the office in which such record is required to be kept; and from and after such filing, such record, and the order correcting the same, shall be received as evidence in all cases, in all courts, the same as if no such error, omission, or defect had ever existed. [56 v. 40, § 2, S. & C. 1172.]

Errors in deed by wife corrected.

SEC. 6. The court of common pleas and superior courts are authorized and empowered to correct, amend, and relieve against, any errors, defects, or mistakes occurring in the deed or other conveyance of a husband and wife heretofore or hereafter executed, and intended to convey or incumber the lands or estate of the wife, or her right of dower in the lands of her husband, in the same manner and to the same extent as the said courts are or shall be authorized or empowered to correct errors, mistakes, or defects in the deeds or conveyances of any other persons. [54 v. 199, § 1, S. & C. 694.]

CHAPTER 17.

TO PERPETUATE TESTIMONY.

SECTION
1. Testimony may be perpetuated.
2. The petition for that purpose.
3. The order for the examination.
4. Cross-interrogatories.
5. Taking and filing the testimony.
6. To be approved and effect of the same.
7. Applicant to pay costs.

Testimony may be perpetuated.

SECTION 1. The testimony of a witness may be perpetuated as herein provided. [Civil Code, § 363, S. & C. 1047.]

The petition for that purpose.

SEC. 2. The applicant shall file in the office of the clerk of the court of common pleas a petition, to be verified, in which shall be set forth, specially, the subject matter relative to which testimony is to be taken, and the names of the persons interested, if known to the applicant, and if not known, such general description as he can give of such persons, as heirs, devisees, alienees, or otherwise. The petition shall also state the names of the witnesses to be examined, and the interrogatories to be propounded to each; that the applicant expects to be a party to an action in a court of this state in which such testimony will, as he believes, be material; and, when the applicant expects to be the plaintiff, the obstacles preventing the immediate commencement of the action. [Civil Code, § 364, S. & C. 1047.]

The order for the examination.

SEC. 3. The court, or a judge thereof, may forthwith make an order allowing the examination of such witnesses. The order shall prescribe the time and place of the examination, how long the parties interested shall be notified thereof,

and the manner in which they shall be notified. [Civil Code, § 365, S. & C. 1047.]

Cross interrogatories.

SEC. 4. When it appears satisfactorily to the court or judge that the parties interested cannot be personally notified, such court or judge shall appoint a competent attorney to examine the petition, and prepare and file cross interrogatories to those contained therein. The witnesses shall be examined upon the interrogatories of the applicant, and upon cross-interrogatories, where they are required to be prepared, and no others shall be propounded to them; nor shall any statement be received which is not responsive to some one of them. The attorney filing the cross-interrogatories shall be allowed a reasonable fee therefor, to be taxed in the bill of costs. [Civil Code, § 366, S. & C. 1047.]

Taking and filing the testimony.

SEC. 5. Such depositions shall be taken before some officer authorized by law to take depositions, or before some person specially authorized by the court or judge, and shall be returned to the office of the clerk of the court in which the petition was filed. [Civil Code, § 367, S. & C. 1047.]

To be approved, and effect of the same.

SEC. 6. The court or judge, if satisfied that the depositions have been properly taken, and as herein required, shall approve the same, and order them to be filed; and if a trial be had between the parties named in the petition, or their privies or successors in interest, the depositions, or certified copies thereof, may be given in evidence by either party, when the witnesses are dead, or insane, or when their attendance for oral examination cannot be required or obtained; but the depositions shall be subject to the same objections for irrelevancy and incompetency as may be made to depositions taken pending an action. [Civil Code, § 368, S. & C. 1047.]

Applicant to pay costs.

SEC. 7. The applicant shall pay the costs of all proceedings under this chapter. [Civil Code, § 369, S. & C. 1047.]

CHAPTER 18.

WATER-CRAFT.

SECTION
1. What liabilities shall constitute a lien.
2. When the liability arises out of the state
3. The craft, owner, or master may be proceeded against.
4. Petition against the craft by name.
5. Summons and warrant for seizure to issue.
6. Expenses to be advanced before seizure.
7. Excess of money advanced to be repaid.
8. How the property seized may be discharged.
9. If action be commenced without cause, defendant may have damages.
10. Service and judgment.
11. Notice of sale by officer.
12. Owner or master liable for balance unpaid by sale.
13. Justices have jurisdiction in certain cases.
14. Appeals may be taken from judgments of justices.
15. Disposition of property after appeal.

What liabilities shall constitute a lien.

SECTION 1. Any steamboat, or other water-craft, of twenty ns burden and upwards, navigating the waters within or rdering upon this state, shall be liable, and such liability all be a lien thereon, for all debts contracted on account ereof, by the master, owner, steward, consignee, or other ent, for materials, supplies, or labor in the building, re-iring, furnishing, or equipping of the same, or for insur-ce, or due for wharfage, and also for damages arising out any contract for the transportation of goods or persons, for injuries done to persons or property by such craft, for any damage or injury done by the captain, mate, or her officer thereof, or by any person under the order or nction of either of them, to any person who is a pas-nger or hand on such steamboat or other water-craft at e time of the infliction of such damage or injury. [57 32, § 1, S. & C. 252.]

When the liability arises out of the state.

SEC. 2. If a liability, as provided in the last section, ise beyond the jurisdiction of this state, a lien therefor all attach, and may be enforced as provided in this chap-r, except against purchasers without notice. [46 v. 78, § S. & C. 256.]

The craft owner, or master may be proceeded against.

SEC. 3. A person having a demand, as provided in sec-on one, may proceed against the owner of the craft, or the aster who contracted the debt, or against the craft itself. S v. 34, § 2, S. & C. 254.]

Petition against the craft by name.

SEC. 4. Such person may file a petition as in a civil tion, in the court of common pleas of the proper county, ainst the craft by name, or, if it does not have a name, by pertinent and substantial description of the same. [61 v. § 3, S. & S. 92]

Summons and warrant for seizure to issue.

SEC. 5. On the filing of the petition the clerk shall issue summons, as in other cases, with a warrant returnable other writs, directing the sheriff to seize the craft, or ch part of her apparel or furniture as may be necessary to tisfy the demand, and to detain the same until discharged due course of law; and the officer who executes the writ all return it, with an inventory of the effects seized and ld under it. [61 v. 18, § 4, S. & S. 93.]

Expenses to be advanced before seizure.

SEC. 6. The officer holding the warrant may require the aintiff to deposit with him such sum of money as he ems reasonable and necessary to defray all necessary ex-nses in taking charge of, detaining, and securing the operty; but in no case shall the officer pay to any person ployed by him for such purpose more than two dollars r day from [for] the time actually employed. [41 v. 51, §§ 2, S. & C. 256.]

Excess of money advanced to be repaid.

SEC. 7. The officer shall return an account of the expen-s incurred by him under the last section; and if the nount deposited with him be greater than the sum by him pended, he shall pay the balance in his hands to the plain-f, and if it be less than that sum, the plaintiff shall forth-th pay him the balance. [41 v. 51, § 3, S. & C. 256.]

How the property seized may be discharged.

SEC. 8. The owner, master, steward, consignee, or other agent of such craft, may discharge the property seized, by delivering to the officer who made the seizure an undertaking, with two sufficient sureties resident of the county, payable to the plaintiff, in double the amount of his demands as stated in the petition, conditioned that the property shall be forthcoming to answer the judgment under the seizure. [38 v. 34, § 5, S. & C. 254.]

If action be commenced without cause, defendant may have damages.

SEC. 9. If an action be commenced under this chapter without reasonable or probable cause, the person commencing such action shall be liable to make compensation to the defendant for all damage by him sustained by reason of the same; the defendant if appearing and defending, and damaged as aforesaid, shall set forth in his answer, or in a written statement, if the cause be pending before a justice of the peace, that such action was commenced without reasonable or probable cause, to the damage of the defendant; and if, on the trial, it be found that such action was commenced without reasonable or probable cause, the damage sustained by the defendant shall be assessed, and for the amount so assessed judgment shall be rendered and execution issued as in other cases. [38 v. 34, § 8, S. & C. 255.]

Service and judgment.

SEC. 10. The return of the warrant showing a seizure of property shall be equivalent to service. If the judgment be for the plaintiff, the property held may be sold on the order of the court, and the surplus money shall be returned to the owner, master, or agent on demand; if the judgment be against the plaintiff, the property seized shall be restored, and judgment for costs entered against him, upon which execution may issue as in other cases. [38 v. 34, § 6, S. & C. 254.]

Notice of sale by officer.

SEC. 11. The officer holding a writ for the sale of any craft, her apparel or furniture, shall, before he proceeds to sell the same, cause public notice to be given of the time and place of sale, for at least ten days previous thereto, by advertisement in a newspaper published in the county, or if no newspaper is published therein, then in a newspaper of general circulation in the county, and by advertisements posted in at least five public places in the county; and such sale shall be conducted in all other respects, and the court shall have the same power thereover, as sales upon execution. [49 v. 101, S. & C. 257.]

Owner or master liable for balance unpaid by sale.

SEC. 12. If the proceeds of the sale do not satisfy the judgment, the owner of the craft, or master who contracted the debt, or incurred the liability, shall be liable in a civil action for the balance. [38 v. 34, § 6, S. & C. 255.]

Justices have jurisdiction in certain cases.

SEC. 13. Justices of the peace within their respective counties shall have jurisdiction under this chapter when the amount claimed does not exceed three hundred dollars, and shall proceed as near as may be according to the rules prescribed herein for other courts; but the bill of particulars

of the plaintiff shall be verified by his affidavit. [72 v. 167, § 7.]

Appeals may be taken from judgment of justices.

SEC. 14. Parties to any such action before a justice of the peace shall have the same right of appeal as in other cases; and if the judgment be against the craft by name or description, the owner, master, steward, consignee, or other agent, may appeal therefrom by entering into bond as in other cases. [38 v. 34, § 10, S. & C. 255.]

Disposition of property after appeal.

SEC. 15. If the plaintiff appeal, and perfect the appeal, the officer who seized the property shall retain the same unless it be discharged as provided in section eight; if the defendant appeal, and the appeal be perfected, the officer, on receiving the certificate of the justice of that fact, shall restore the property. [38 v. 34, § 10, S. & C. 255.]

CHAPTER 19.

WRECK-MASTERS.

SECTION
1. Appointment, term of office, bond, etc.
2. Counties may be divided into districts, etc.
3. Duties and compensation of wreck-masters and assistants.
4. Arbitration of disagreement as to compensation; appeal.
5. Who ineligible to adjust compensation.
6. Proceedings after appeal.
7. When wreck-masters not to sell vessel or cargo.
8. Property to be inventoried before removal, etc.
9. Penalties for unlawful interference with stranded vessel, etc.
10. Recovery against person in possession of property stolen, etc.
11. Proceedings when stranded vessel or property unclaimed.
12. When such vessel or property to be sold, etc.
13. Disposition of money received on such sale.
14. Persons finding stranded property to give notice.
15. Penalty for concealment, etc., of such property.
16. Liability for stealing or embezzling stranded property.
17. Abuse of trust by wreck-master.
18. Penalty for refusal to assist wreck-master.

Appointment, term of office, bond, etc.

SECTION 1. The court of common pleas of each county in this state which borders on Lake Erie, or on any bay, inlet, sound, or navigable river, or through or into which vessels licensed by the United States government pass in the navigation of a river, shall appoint at least one discreet and fit person to be commissioner of wrecks for such county, for a term of not less than one year nor more than five years, who shall enter into bond to the state of Ohio, with not less than two good and sufficient sureties, to be approved by the court, in a sum not less than five thousand nor more than twenty thousand dollars, for the faithful discharge of the duties of his office, which bond, with his oath of office indorsed thereon, shall be deposited in the [office of] the secretary of state; and

the clerk of the court shall give to each person so appointed a certificate of his appointment, under the seal of the court. [37 v. 17, § 1, S. & C. 1638.]

Counties may be divided into districts, etc.

SEC. 2. Said courts may, from time to time, lay off two or more districts in their respective counties, alter the same at discretion, and appoint a commissioner in each, who shall have the sole authority of commissioner of wrecks in the district to which he is appointed. [37 v. 17, § 2, S. & C. 1638.]

Duties and compensation of wreck-masters and assistants.

SEC. 3. Any such commissioner shall, on application made to him by or in behalf of any owner, supercargo, master, or other person having charge of any ship or other vessel, or cargo, which is stranded, or in danger of being stranded or in distress, on or near the shore of his county or district, call to his assistance and employ as many men as shall be agreed upon between him and the person having lawful charge of the vessel or cargo to be useful and necessary to assist in preserving the same; the men so employed shall be under the direction of the person having such charge; the commissioner, and all others who, at the request or with the approbation of such person in charge, assist in preserving the vessel or cargo, shall be paid a reasonable compensation for their labor and trouble, and in default thereof the vessel or cargo, as the case may be, shall remain in custody of the commissioner until all reasonable charges are paid, or security for their payment given to the satisfaction of the claimants. [37 v. 17, § 3, S. & C. 1638.]

Arbitration of disagreement as to compensation; appeal.

SEC. 4. In case the parties disagree as to the amount of such compensation, the person having the lawful charge of the vessel or cargo, and the commissioner, may each choose one indifferent person, who is a freeholder, to ascertain and adjust the compensation; if they cannot agree, they shall appoint another like person to assist them in the adjustment; and the decision of such persons, or any two of them, shall be binding on all the parties, unless the commissioners, or the person having the lawful charge of the vessel or cargo, or a person having an interest therein, appeal, within fifteen days, to the court of common pleas of the county wherein the vessel or cargo was saved, or the services were rendered; which court shall, in case of appeal, at the next term thereof, in a summary manner, hear and determine the same, and render judgment thereon. [37 v. 17, § 3. S. & C. 1638.]

Who ineligible to adjust compensation.

SEC. 5. No person who is related within the third degree, according to the rules of common law, to any person claiming compensation for saving, or assisting to save, a vessel or cargo, nor any person who has received compensation for like service within three years next preceding, shall be considered as indifferent between the parties, or eligible to adjust such claim. [37 v. 17, § 14, S. & C. 1638.]

SEC. 6. In case of appeal, the person legally entitled to the care and charge of the vessel or cargo may pay to the commissioner the sum awarded by the freeholders; and in

the event of such payment, the commissioner shall restore the vessel or cargo to such person; but such payment shall not prejudice the rights or interests of the owner of the vessel or cargo on the appeal. If the sum awarded by the freeholders be lessened by the judgment on appeal, the commissioner shall restore to the person entitled thereto the difference between the award and the judgment; and if the judgment increases the award, the owner of the vessel or cargo shall be answerable for such increase, and judgment shall be rendered by the court against him therefor. [37 v. 17, § 4, S. & C. 1638.]

Proceedings after appeal.

SEC. 7. A commissioner shall not take upon himself any power or authority to sell, or in any way dispose of, a vessel or cargo, or any part of either, when there is either master, owner, supercargo, consignee, insurer, or agent present; but in all things he shall render to such persons such assistance as they require. [37 v. 17, § 5, S. & C. 1638.]

When wreck-masters not to sell vessel or cargo.

SEC. 8. A commissioner shall not remove any goods or other property which he assists in saving until he makes a true and perfect inventory thereof, which shall describe the marks and numbers of the respective packages or casks, the kind of goods they contain—when it can be ascertained without injury to the goods, or unnecessarily breaking the packages—and the quantity, as near as practicable; he shall affix his certificate to the inventory, and carefully transcribe the same in a book to be kept by him for that purpose, which book shall be subject to the inspection of all persons interested in the property, and shall also be laid before the court by which the commissioner was appointed, at the expiration of his commission, and at such other times as the court may order or direct, for inspection. [37 v. 17, § 6, S. & C. 1638.]

Property to be inventoried before removal, etc.

SEC. 9. A person, other than those employed by a commissioner, who enters, or endeavors to enter, on board of a vessel stranded or in distress, without leave of the master, owner, or other person having the care or charge thereof, or without lawful right to do so, or who molests such master, owner, or other person in saving such vessel or its cargo, or willfully defaces the marks on goods belonging to such cargo before they are inventoried by the commissioner, or other person concerned in their care and preservation, shall forfeit and pay the sum of one hundred dollars, to be recovered by civil action, with costs, in any court having cognizance thereof, in the name, and to the use and benefit, of the owner of the vessel or goods, as the case may be. [37 v. 17, § 7, S. & C. 1638.]

Penalties for unlawful interference with stranded vessel, etc.

SEC. 10. If property which has been stolen or unlawfully carried away from a vessel stranded or in distress, be found upon or in possession of any person, such person shall, on demand, deliver the property to the commissioner, or to the owner, supercargo, master, or such other person as may be authorized to receive it, and shall also be liable to the

Recovery against person in possession of property stolen, etc.

owner in double the value of the property so found, with costs, to be sued for and recovered in any court having cognizance thereof. [37 v. 17, § 7, S. & C. 1638.]

Proceedings when stranded vessel or property unclaimed.

SEC. 11. If a vessel or cargo be cast on shore within the limits of any county designated in section one, and no master, owner, supercargo, consignee, insurer, or agent be present to claim the same when found, the commissioner of the proper district, or, in case of his absence or disability, a commissioner of any district of the county shall take possession thereof, make and transcribe an inventory of the same, as provided in section eight, and cause a true description of the goods, with their marks, numbers, and kinds, so far as can be ascertained, and a description of the vessel in which they were found, as fully as can be conveniently done, to be advertised in at least one public newspaper published in the state, for the period of four weeks; and if the value of the goods exceeds five hundred dollars, the advertisement shall be made in one of the public newspapers in each of the cities of Cleveland and Columbus, for the same length of time. [37 v. 17, § 8, S. & C. 1638.]

When such vessel or property to be sold, etc.

SEC. 12. If such vessel, or any of the property, remains unclaimed at the expiration of one year from the completion of the advertisement, the commissioner shall advertise the same for sale, by posters put up in two or more public places, and also in some newspaper of general circulation in the county wherein the same was found, not less than ten nor more than twenty days, and thereafter proceed to sell the same at public vendue for the best price that can be obtained; but if any of the property is perishable, it may be sold after an advertisement of not less than five days, by posters put up in two or more public places in the county. After deducting all reasonable charges and expenses, and the compensation for his own labor and trouble, to be ascertained and allowed by a judge of the court of common pleas of the county, the residue of the money arising from the sale, together with an account of sales, shall be transmitted by the commissioner to the treasurer of this state. [37 v. 17, §§ 8, 12, S. & C. 1638.]

Disposition of money received on such sale.

SEC. 13. The treasurer of state shall file the account of sales in his office, and keep an account of money so received for the benefit of the owner in case he claim the same, which may be done by proving his property to the satisfaction of the commissioner who sold it, together with two justices of the peace of the county, who are hereby authorized to investigate the case, and hear proof therein. If the justness of the claim be established to the satisfaction of the commissioner and justices, they shall certify the fact, under their hands, to the treasurer of state, who shall file the certificate in his office, and pay to the claimant the amount of money in his hands as the proceeds of the sale of the property on which his claim is based; and if, at the expiration of two years from the completion of the advertisement, the money

so deposited, or any portion thereof, remain in the state treasury, it shall be for the use of the state. [37 v. 17, § 8, S. & C. 1638.]

Persons finding stranded property to give notice.

SEC. 14. When a person finds any stranded or ship-wrecked property, above the value of twenty dollars, within the limits of any county designated in section one, and no owner appears to claim the same, he shall forthwith give information to the nearest commissioner of the county, or if the county is divided into districts, then to the commissioner of the district in which the property is found, for which he shall be allowed all reasonable charges and expenses, to be ascertained by the commissioner, and paid out of the proceeds of the sale of the property. [37 v. 17, § 9, S. & C. 1638; 43 v. 54, § 1, S. & C. 1643.]

Penalty for concealment, etc., of such property.

SEC. 15. A person who finds stranded or ship-wrecked property, and conceals the same, or converts it to his own use, or fails to give information to the commissioner within four days, shall pay to the commissioner double the value of the property, to be recovered, with costs, by the commissioner, in a civil action, in his own name, in any court having cognizance thereof, for the use of the state, out of which the commissioner shall pay to the owner thereof all the damages he sustains by reason of the concealment, conversion, or failure to give information, in case he appear and prove his property within one year from the time the judgment of recovery is rendered. [37 v. 17, § 9, S. & C. 1641; 43 v. 54, § 1, S. & C. 1643.]

Liability for stealing or embezzling stranded property.

SEC. 16. A person who steals or embezzles stranded or ship-wrecked property, or, knowing it to be stolen or embezzled, conceals it, shall forfeit and pay to the owner or commissioner, whichsoever first sues for the same, double the value of the property, to be recovered in any court having cognizance thereof, and shall, moreover, be liable to criminal prosecution as for other like offenses. [37 v. 17, § 10, S. & C. 1642; 43 v. 54, § 2, S. & C. 1643.]

Abuse of trust by wreck-master.

SEC. 17. A commissioner who abuses the trust reposed in him, by fraud, connivance, or willful neglect, shall, on conviction thereof, forfeit and pay double damages to the party aggrieved thereby, to be recovered, with costs, by civil action, in any court having cognizance thereof, and shall forfeit his office, and be ineligible to another appointment thereto. [37 v. 17, § 11, S. & C. 1638.]

Penalty for refusal to assist wreck-master.

SEC. 18. A person who refuses or neglects, on demand, to give the assistance provided for by section three, in saving a vessel or cargo, shall forfeit and pay the sum of five dollars, to be recovered, with costs, by the commissioner of the county or district wherein the offense is committed, in a civil action, before any justice of the peace of the county, to and for the use of the state. [37 v. 17, § 11, S. & C. 1638.]

DIVISION VIII. REPEALS.

SECTION 1. The following acts and parts of acts are hereby repealed:

S. & C. 80, 29 v. 264. 1. The act of February 17, 1831, entitled "an act authorizing and regulating arbitrations."

S. & C. 83, 29 v. 341. 2. The act of February 24, 1831, entitled "an act privileging certain persons from arrest and imprisonment."

S. & C. 85, 52 v. 320. 3. The act of February 11, 1854, entitled "an act supplementary to an act privileging certain persons from arrest and imprisonment, passed February 24, 1831."

S. & C. 159, 43 v. 67. 4. Section four of the act of March 8, 1845, entitled "an act to regulate judicial proceedings where banks and bankers are parties."

S. & C. 252, 38 v. 34. 5. The act of February 26, 1840, entitled "an act to provide for the collection of claims against steamboats and other water-crafts, and authorizing proceedings against the same by name."

S. & C. 256, 46 v. 78. 6. The act of March 2, 1848, entitled "an act explanatory of the act entitled 'an act providing for the collection of claims against steamboats and other water-crafts, and authorizing proceedings against the same by name,' passed February 26, 1840."

S. & C. 256, 41 v. 51. 7. The act of March 10, 1843, entitled "an act to amend the act entitled 'an act providing for the collecting of claims against steamboats and other water-crafts, and authorizing proceedings against the same by name,' passed February 26, 1840."

S. & C. 257, 49 v. 101. 8. The act of March 24, 1851, entitled "an act to amend the act entitled 'an act providing for the collection of claims against steamboats and other water-crafts, and authorizing proceedings against the same in [by] name,' passed February 26, 1840, and the act amendatory thereto, passed March 10, 1843."

S. & C. 258, 32 v. 17. 9. Section one of the act of February 24, 1834, entitled "an act declaratory of the law concerning contempts of court."

S. & C. 259, 29 v. 258. 10. The act of February 25, 1831, entitled "an act to provide for the execution of real contracts in certain cases."

S. & C. 309, 50 v. 274. 11. Section seventy-seven of the act of May 1, 1852, entitled "an act to provide for the creation and regulation of incorporated companies in the State of Ohio."

S. & C. 317, 51 v. 293. 12. The act of January 12, 1852, entitled "an act authorizing incorporated companies to change their names."

S. & C. 371, 56 v. 67. 13. The act of March 26, 1859, entitled "an act relating to the partition of real estate held in common by religious societies."

14. Sections seven and eight of the act of March 14, 1853, entitled "an act to amend 'an act relating to the organization of courts of justice, and their powers and duties,' passed February 19, 1852."	S. & C. 384, 51 v. 473.
15. Section two of the act of January 19, 1853, entitled "an act supplementary to the act entitled 'an act relating to the organization of courts of justice, and their powers and duties,' passed February 19, 1852."	S. & C. 385, 51 v. 298.
16. The act of February 10, 1857, entitled "an act in relation to a change of venue."	S. & C. 392, 54 v. 10.
17. The act of March 11, 1853, entitled "an act concerning divorces and alimony."	S. & C. 509, 51 v. 377.
18. The act of April 15, 1857, entitled "an act to amend the act concerning divorce and alimony," passed March 11, 1853.	S. & C. 511, 513, 515, 54 v. 131.
19. Sections eight, ten, eleven, twelve, thirteen and fourteen of the act of January 28, 1823, entitled "an act relating to dower."	S. & C. 520, 29 v. 249.
20. The act of March 3, 1840, entitled "an act to amend the act relating to dower."	S. & C. 522, 38 v. 37.
21. The act of January 11, 1843, entitled "an act to amend an act entitled 'an act relating to dower,' passed January 28, 1823 [1824."]	S. & C. 522, 41 v. 6.
22. The act of April 4, 1859, entitled "an act to provide for the sale or lease of estates tail in certain cases."	S. & C. 550, 56 v. 154.
23. The act of March 12, 1853, entitled "an act supplementary to the act entitled 'an act dispensing with proof in certain cases,' passed December 18, 1823."	S. & C. 552, 51 v. 374.
24. The act of December 18, 1823, entitled "an act concerning the admission of testimony in certain cases."	S. & C. 555, 29 v. 123.
25. Section six of the act of March 19, 1850, entitled "an act to authorize copies of entries and surveys in the Virginia military district to be made."	S. & C. 556, 48 v. 69.
26. Section one of the act of February 8, 1847, entitled "an act relating to the records of the board of public works."	S. & C. 556, 45 v. 54.
27. The act of March 22, 1850, entitled "an act authorizing copies of records and papers in the offices of the governor and secretary of state to be used as evidence in the courts of this state."	S. & C. 557, 48 v. 35.
28. Sections two hundred and forty and two hundred and forty-one of the act of March 23, 1840, entitled "an act to provide for the settlement of the estates of deceased persons."	S. & C. 611, 38 v. 146.
29. The act of February 22, 1811, entitled "an act securing the benefits of the writ of habeas corpus."	S. & C. 681, 29 v. 164.
30. The act of February 28, 1834, entitled "an act to amend an act securing the benefits of the writ of habeas corpus."	S. & C. 684, 32 v. 23.
31. The act of February 8, 1847, entitled "an act further to amend the act entitled 'an act securing the benefits of the writ of habeas corpus," passed February 22, 1811."	S. & C. 684, 45 v. 45.
32. The act of March 16, 1839, entitled "an act for the relief of jurors in certain cases."	S. & S. 757, 37 v. 58.

Div. 8.	Repeals.
S. & C. 761, 57 v. 52.	33. The act of March 22, 1860, entitled "an act supplementary to 'an act relating to juries,' passed February 9, 1831."
S. & C. 809, 52 v. 127.	34. The act of May 1, 1864, entitled "an act supplementary to 'an act to regulate the election, contest of election, and resignation of justices of the peace,' passed March 11, 1853."
S. & C. 881, 29 v. 261.	35. The act of March 10, 1831, entitled "an act for the relief of occupying claimants of land."
S. & C. 886, 47 v. 56.	36. The act of March 22, 1849, entitled "an act to amend an act for the relief of occupying claimants of land."
S. & C. 893, 29 v. 254.	37. The act of February 17, 1831, entitled "an act to provide for the partition of real estate."
S. & C. 899, 34 v. 1.	38. The act of January 23, 1836, entitled "an act to explain the act to provide for the partition of real estate."
S. & C. 900, 38 v. 37.	39. The act of March 3, 1840, entitled "an act to amend an act to provide for the partition of real estate."
S. & C. 900, 45 v. 59.	40. The act of February 8, 1847, entitled "an act to amend an act entitled 'an act to provide for the partition of real estate,' passed February 17, 1831."
S. & C. 900, 56 v. 152.	41. The act of April 4, 1859, entitled "an act to amend an act entitled 'an act to provide for the partition of real estate."
S. & C. 901, 49 v. 102.	42. The act of March 24, 1851, entitled "an act to amend an act entitled 'an act to provide for the partition of real estate,' passed February 17, 1851."
S. & C. 901, 48 v. 38.	43. The act of March 21, 1850 entitled "an act to amend the act to provide for the partition of real estate."
S. & C. 940, 51 v. 57.	44. The act of March 11, 1853, entitled "an act to establish a code of civil procedure," except title XVI, and chapter IV of title XVIII.
S. & C. 968, 54 v. 91.	45. The act of April 8, 1857, entitled "an act to amend sections eighty-four, one hundred and one, and one hundred and twenty-seven of the code of civil procedure."
S. & C. 982, 52 v. 22.	46. The act of March 11, 1854, entitled "an act to amend section one hundred and six of an act entitled 'an act to establish a code of civil procedure,' passed March 11, 1853."
S. & C. 1011, 54 v. 29.	47. The act of March 11, 1857, entitled "an act to amend sections two hundred and twenty-eight and two hundred and thirty-six of the act entitled 'an act to establish a code of civil procedure,' passed March 11, 1853."
S. & C. 1015, 55 v. 6.	48. The act of February 15, 1858, entitled "an act to amend the two hundred and thirty-ninth section of the act to establish a code of civil procedure, passed March 11, 1853."
S. & C. 1018, 54 v. 139.	49. The act of April 15, 1857, entitled "an act to amend section two hundred and fifty of an act to establish a code of civil procedure, passed March 11, 1853."
S. & C. 1027, 54 v. 92.	50. The act of April 8, 1857, entitled "an act to amend the act entitled 'an act to establish a code of civil procedure.'"
S. & C. 1034, 55 v. 26.	51. The act of March 27, 1858, entitled "an act to amend section three hundred and six of the code of civil procedure,

passed March 11, 1853, and to prescribe the mode of keeping record of sales of property made pursuant to orders of courts, and to provide for re-docketing actions in certain cases."

52. The act of March 6, 1857, entitled "an act to amend the one hundred and fifth and three hundred and sixtieth sections of the act to establish a code of civil procedure, passed March 11, 1853, and supplementary to said code." S. & C. 1045, 54 v. 23.

53. The act of March 10, 1859, entitled "an act to amend section four hundred and fifteen of the code of civil procedure, Swan's statutes, page six hundred and seventy-four." S. & C. 1060, 56 v. 39.

54. The act of March 10, 1860, entitled "an act to amend section four hundred and twenty-seven of the code of civil procedure." S. & C. 1071, 57 v. 32.

55. The act of April 6, 1859, entitled "an act to amend an act entitled 'an act to establish a code of civil procedure.'" S. & C. 1074, 56 v. 242.

56. The act of January 25, 1860, entitled "an act to amend section four hundred and ninety of an act entitled 'an act to establish a code of civil procedure,' passed March 11, 1853." S. & C. 1093, 57 v. 4.

57. The act of February 26, 1857, entitled "an act to amend section four hundred and ninety-one of an act entitled 'an act to establish a code of civil procedure,' passed March 11, 1853." S. & C. 1094, 54 v. 21.

58. The act of February 27, 1846, entitled "an act in aid of the law regulating suits by and against companies and partners." S. & C. 1138, 44 v. 66.

59. The act of February 28, 1842, entitled "an act to confer the authority of changing the names of persons, towns, and villages upon the court of common pleas." S. & C. 1138, 40 v. 28.

60. The act of March 12, 1853, entitled "an act authorizing suits upon written instruments to be brought in the name by which the same is executed, and prescribing the mode in which sureties of executors, administrators, or guardians may be made parties to judgments." S. & C. 1139, 51 v. 397.

61. The act of March 12, 1853, entitled "an act prescribing the effects of tenders in certain cases." S. & C. 1140, 51 v. 397.

62. The act of April 24, 1852, entitled "an act authorizing the courts of justice to change the venue in suits wherein a corporation is a party, in certain cases." S. & C. 1140, 50 v. 100.

63. The act of March 5, 1831, entitled "an act in relation to permanent leasehold estates." S. & C. 1142, 37 v. 44.

64. The act of March 23, 1850, entitled "an act to exempt the homestead of families from forced sale on execution to pay debts" S. & C. 1145, 48 v. 29.

65. The act of March 29, 1841, entitled "an act declaratory of the law in certain cases, and to prohibit the appraisers of land from purchasing the same." S. & C. 1147, 39 v. 42.

66. The act of March 4, 1859, entitled "an act to exempt from sale and execution certain property therein." S. & C. 1147, 61 v. 36.

67. The act of March 22, 1850, entitled "an act requiring the publication of legal advertisements and notices to be made in German newspapers in certain cases." S. & C. 1148, 48 v. 27.

Div. 8.	Repeals.
S. & C. 1148, 46 v. 95.	68. Section one of the act of February 25, 1848, entitled "an act to amend the act to regulate the practice of the judicial courts."
S. & C. 1148, 43 v. 87.	69. The act of March 4, 1845, entitled "an act to authorize sheriffs to administer oaths in certain cases."
S. & C. 1149, 48 v. 31.	70. The act of March 28, 1850, entitled "an act to regulate judicial proceedings in certain cases."
S & C. 1149, 49 v. 25.	71. The act of March 20, 1851, entitled "an act to amend the act entitled 'an act to amend the act to regulate the practice of the judicial courts,' passed February 15, 1848; also, to amend the act passed March 21, 1850, in amendment of the practice of the judicial courts."
S. & C. 1149, 44 v. 114.	72. Sections one and two of the act of March 2, 1846, entitled "an act for the protection of purchasers at judicial and tax sales."
S. & C. 1150, 48 v. 97.	73. The act of March 19, 1850, entitled "an act to amend the act for the relief of sureties and others in certain cases."
S. & C. 1151, 54 v. 23.	74. Section three of the act of March 6, 1857, entitled "an act to amend the one hundred and fifth and thirty-sixth sections of the act to establish a code of civil procedure, passed March 11, 1853, and supplementary to said code."
S. & C. 1151, 53 v. 178.	75. The act of April 10, 1856, entitled "an act in addition to the several acts in relation to the courts of justice, and their powers and duties."
S. & C. 1153, 55 v. 37.	76. The act of April 2 1858, entitled "an act supplementary to an act to establish a civil code of procedure, passed March 11, 1853," except the third section thereof.
S. & C. 1153, 54 v. 104.	77. The act of April 7, 1857, entitled "an act further describing the duties of sheriffs in certain cases."
S. & C. 1161, 50 v. 93.	78. The act of March 23, 1852, entitled "an act regulating appeals to the district court."
S. & C. 1169, 54 v. 95.	79. The act of April 8, 1856, entitled "an act supplementary to 'an act regulating appeals to the district court,' passed March 23, 1852."
S. & C. 1170, 52 v. 27.	80. The act of March 25, 1864, entitled "an act authorizing depositions to be taken in the state of Ohio, to be used in the courts of other states."
S. & C. 1171, 57 v. 41.	81. The act of March 16, 1860, entitled "an act supplementary to the code of civil procedure."
S. & C. 1172, 56 v. 93.	82. The act of March 30, 1859, entitled "an act supplementary to an act entitled 'an act to establish a code of civil procedure,' passed March 11, 1853."
S. & C. 1172, 56 v. 40.	83. The act of March 10, 1859, entitled "an act to authorize courts to give effect to the intention of parties and officers by curing defects, omissions, and errors in instruments and proceedings."
S. & C. 1173, 57 v. 118.	84. The act of March 26, 1860, entitled "an act to provide for the collection of claims against railroad companies."
S. & C. 1210, 29 v. 340.	85. The act of January 12, 1805, entitled "an act regulating prison bounds."
S. & C. 1211, 31 v. 11.	86. The act of February 23, 1833, entitled "an act defining the prison bounds of the several counties in this state."

87. Section twenty-four of the act of March 14, 1853, entitled "An act defining the jurisdiction and regulating the practice of probate courts." S. & C. 1212, 51 v. 167.

88. The act of March 14, 1836, entitled "an act to authorize the making of indexes to the judicial records in the county of Hamilton, and in other counties of this state." S. & C. 1230, 34 v. 45.

89. The act of January 26, 1838, entitled "an act to amend the act entitled 'an act to authorize the making of indexes to the judicial records in the county of Hamilton, and in other counties of this state,' passed March 16, 1836, and for other purposes." S. & C. 1281, 36 v. 15.

90. Sections nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, and twenty-five of the act of May 3, 1852, entitled "an act relating to wills, and to repeal former acts relating thereto." S. & C. 1615, 59 v. 297.

91. The act of February 13, 1839, entitled "an act to provide for the appointment of wreckmasters, and define their duties." S. & C. 1638, 37 v. 17.

92. The act of February 28, 1845, entitled "an act in addition to the act entitled 'an act to provide for the appointment of wreckmasters, and define their duties,' passed February 13, 1839." S. & C. 1643, 43 v. 54.

93. The act of February 7, 1862, entitled "an act to amend section one of the 'act privileging certain persons from arrest and imprisonment,' passed February 24, 1831." S. & S. 18, 59 v. 6.

94. The act of February 29, 1864, entitled "an act to amend sections three and four of an act entitled 'an act to provide for the collection of claims against steamboats and other water-crafts, and authorizing proceedings against them by name." S. & S. 92, 61 v. 18.

95. The act of March 28, 1862, entitled "an act to define and punish certain contempts of court." S. & S. 97, 59 v. 31.

96. The act of April 5, 1866, entitled "an act amending the first section of an act entitled 'an act to provide for the collection of claims against railroad companies,' passed March 26, 1860." S. & S. 119, 63 v. 126.

97. The act of March 9, 1866, entitled "an act to amend the ninth section of the act entitled 'an act relating to dower.'" S. & S. 310, 63 v. 33.

98. The act of February 12, 1863, entitled "an act supplementary to an act entitled 'an act to amend an act entitled an act relating to dower, passed January 28, 1824,' passed January 11, 1843." S. & S. 311, 60 v. 10.

99. The act of March 30, 1864, entitled "an act to authorize the sale of determinable estates, and supplemental to the act for the sale or lease of estates tail in certain cases, passed April 4, 1859." S. & S. 346, 61 v. 80.

100. The act of April 13, 1865, entitled "an act supplemental to the act to authorize the sale or lease of estates tail, and estates for life in certain cases." S. & S. 347, 62 v. 184.

101. The act of May 8, 1868, entitled "an act to amend section nine of the act entitled 'an act securing the benefits S. & S. 387, 65 v. 165.

of the writ of habeas corpus, as amended by section one,' passed April 12, 1862."

S. & S. 411, 59 v. 63. 102. The act of April 25, 1862, entitled "an act to amend section three of an act entitled 'an act for the relief of jurors in certain cases,' passed and took effect March 16, 1839."

S. & S. 504, 64 v. 13. 103. The act of February 14, 1867, entitled "an act to amend and repeal section three of an act entitled 'an act to provide for the partition of real estate,' passed February 17, 1831."

S. & S. 505, 65 v. 71. 104. The act of April 13, 1868, entitled "an act to amend an act entitled 'an act to amend section eight of an act entitled an act to provide for the partition of real estate, passed February 17, 1831,' passed April 16, 1867."

S. & S. 506, 62 v. 142. 105. The act of April 13, 1865, entitled "an act supplementary to the act entitled 'an act to provide for the partition of real estate,' passed February 31 [17], 1831."

S. & S. 541, 64 v. 145. 106. The act of April 13, 1867, entitled "an act to amend section fifteen of an act entitled 'an act to establish a code of civil procedure,' passed March 11, 1853."

S. & S. 542, 63 v. 87. 107. The act of April 3, 1866, entitled "an act to amend section forty-nine of the code of civil procedure."

S. & S. 542, 65 v. 116. 108. The act of April 30, 1868, entitled "an act to amend section sixty-six of the 'act to establish a code of civil procedure,' passed March 11, 1853."

S. & S. 544, 64 v. 10. 109. The act of January 28, 1867, entitled "an act to amend section one hundred and seventy-one of 'an act to establish a code of civil procedure,' passed March 11, 1853."

S. & S. 545, 59 v. 25. 110. The act of March 13, 1862, entitled "an act to amend section one hundred and seventy-five of the code of civil procedure."

S. & S. 546, 65 v. 81. 111. The act of April 9, 1868, entitled "an act to amend the code of civil procedure in reference to the replevin of property, and to repeal sections one hundred and seventy-nine, one hundred and eighty-three, and one hundred and eighty-four of said code, as amended April 16, 1867."

S. & S. 549. 112. The act of February 16, 1865, entitled "an act to amend section one hundred and ninety-two of the code of civil procedure."

S. & S. 552, 65 v. 213. 113. The act of May 13, 1868, entitled "an act to amend an act entitled 'an act to amend section two hundred and sixty-six of the act entitled an act to establish a code of civil procedure, passed March 11, 1853,' passed April 13, 1867."

S. & S. 552, 65 v. 213. 114. The act of May 16, 1868, entitled "an act to amend section two hundred and one of the 'act to establish a code of civil procedure,' passed March 11, 1853."

S. & S. 560, 58 v. 57. 115. The act of April 3, 1861, entitled "an act to amend sections three hundred and thirteen and three hundred and forty-four of the code of civil procedure."

S. & S. 562, 64 v. 236. 116. The act of April 16, 1867, entitled "an act to amend section four hundred and seventeen of the code of civil procedure of the state of Ohio."

117. The act of May 15, 1868, entitled "an act to amend

section four hundred and forty-seven of an act entitled 'an act to establish a code of civil procedure,' passed March 11, 1853." S. & S. 563, 65 v. 202.

118. The act of March 20, 1867, entitled "an act to amend section four hundred and fifty-five of an act to establish a code of civil procedure, passed March 11, 1853, took effect June 1, 1853." S. & S. 565, 64 v. 64.

119. The act of April 16, 1862, entitled "an act amending section four hundred and seventy-three of the code of civil procedure relative to contempts, and to repeal said original section." S. & S. 566, 59 v. 48.

120. The act of February 21, 1867, entitled "an act to amend section four hundred and eighty-nine of the code of civil procedure." S. & S. 567, 64 v. 20.

121. The act of February 15, 1867, entitled "an act to amend section five hundred and forty-three of the code of civil procedure." S. & S. 570, 64 v. 15.

122. The act of April 14, 1868, entitled "an act to amend section five hundred and ninety-two of the code of civil procedure." S. & S. 572, 65 v. 96.

123. The act of March 30, 1868, entitled "an act to amend section six hundred and eleven (611) of the act entitled 'an act to establish a code of civil procedure,' passed March 11, 1853." S. & S. 573, 65 v. 40.

124. The act of February 19, 1864, entitled "an act supplementary to the act to provide a code of civil procedure, and to prevent multiplicity of actions." S. & S. 575, 61 v. 9.

125. The act of May 13, 1868, entitled "an act to enable co-tenants in common and co-parceners of any estate in lands, tenements, or hereditaments, to compel an account for rents and profits, etc." S. & S. 578, 65 v. 187.

126. The act of April 13, 1867, entitled "an act supplementary to an act entitled 'an act to establish a code of civil procedure,' passed March 11, 1853." S. & S. 579, 64 v. 144.

127. The act of March 28, 1865, entitled "an act to provide for the publication of legal advertisements in daily newspapers." S. & S. 580, 62 v. 66.

128. The act of April 16, 1867, entitled "an act supplementary to an act entitled 'an act to establish a code of civil procedure,' passed March 11, 1853." S. & S. 585, 64 v. 208.

129. The act of May 16, 1868, entitled "an act to amend section five of the act entitled 'an act to relieve district courts, and to give greater efficiency to the judicial system of the state,' passed April 12, 1858." S. & S. 589, 65 v. 211.

130. The act of April 3, 1862, entitled "an act to amend section two of an act entitled 'an act further prescribing the powers and duties of courts of this state and the judges thereof,' passed April 5, 1856." S. & S. 601, 59 v. 39.

131. The act of February 29, 1864, entitled "an act for the relief of sureties and bail in certain cases." S. & S. 741, 61 v. 19.

132. The act of March 29, 1865, entitled "an act for the

S. & S. 742, 62 v. 69. relief of sureties of sheriffs and other officers therein named."

S. & S. 743, 61 v 103. 133. The act of May 1, 1864, entitled "an act for the relief of the sureties of constables and city and village marshals in certain cases."

S. & S. 743, 64 v. 13. 134. The act of February 15, 1867, entitled "an act for the relief of sureties of justices of the peace, constables, and township treasurers."

66 v. 23. 135. The act of March 12, 1869, entitled "an act to amend section four hundred and thirty of the code of civil procedure."

66 v. 42. 136. The act of April 3, 1869, entitled "an act to amend section three hundred and seven of the code of civil procedure."

66 v. 48. 137. The act of April 9, 1869, entitled "an act to amend 'an act to exempt the homestead of families from forced sale on execution to pay debts,' passed March 23, 1850."

66 v. 144. 138. The act of May 7, 1869, entitled "an act supplementary to the code of civil procedure, and to provide for the correction of clerical errors in pleadings."

67 v. 29. 139. The act of April 2, 1870, entitled "an act to amend section one of an act entitled 'an act further prescribing the powers and duties of the courts of this state and the judges thereof,' passed April 5, 1856."

67 v. 111. 140. Sections two, four, five, and nine of the act of April 18, 1870, entitled "an act to amend sections 28, 181, 313, 314, as amended February 16, 1866; 374, as amended March 29, 1859; 517, 526, 532, and 557 of the code of civil procedure."

68 v. 17. 141. The act of February 6, 1871, entitled "an act to amend an act passed March 19, 1868, entitled 'an act supplementary to an act entitled 'an act to establish a code of civil procedure,' passed March 11, 1853."

68 v. 77. 142. The act of April 26, 1871, entitled "an act to amend section fifty-eight of the code of civil procedure."

68 v. 106. 143. The act of May 1, 1871, entitled "an act to amend section four of an act to exempt the homestead of families from forced sale on execution to pay debts, passed March 23, 1850."

69 v. 44. 144. The act of March 13, 1872, entitled "an act to amend chapter two, section (376) three hundred and seventy-six of the code of civil procedure."

69 v. 71. 145. The act of April 10, 1872, entitled "an act supplementary to an act entitled 'an act to amend section one of an act entitled an act to amend sections five and nine of an act entitled an act regulating the mode of administering assignments in trust for the benefit of creditors, passed April 6, 1859,' passed April 18, 1861."

69 v. 88. 146. The act of April 23, 1872, entitled "an act prescribing the mode of assessment and collection of compensation to the owners of private property appropriated by and to the use of corporations."

147. The act of April 25, 1872, entitled "an act to amend

section 287 of an act entitled 'an act to establish a code of civil procedure,' passed March 11, 1853, as amended by the act of April 28, 1862." 69 v. 109.

148. The act of February 27, 1873, entitled "an act to amend section three (3) of an act entitled 'an act to amend an act to exempt the homestead of families from forced sale on execution to pay debts, passed March 23, 1850,' passed April 9, 1869." 70 v. 51.

149. The act of March 7, 1873, entitled "an act to amend section one hundred and five of an act entitled 'an act to establish a code of civil procedure,' passed March 11, 1853, as amended March 6, 1857." 70 v. 54.

150. The act of April 3, 1873, entitled "an act for the maintenance and support of illegitimate children, and to repeal certain acts therein named." 70 v. 111.

151. The act of April 16, 1873, entitled "an act to exempt specific articles of personal property from execution." 70 v. 139.

152. The act of April 18, 1873, entttled "an act to amend section fifty-three of an act entitled 'an act to establish a code of civil procedure,' passed March 11, 1853." 70 v. 138.

153. The act of April 26, 1873, entitled "an act relating to juries." 70 v. 167.

154. Section forty-eight of the act of May 1, 1873, entitled "an act for the reorganization and maintenance of common schools." 70 v. 195.

155. The act of May 3, 1873, entitled "an act to amend section eight (8) of an act entitled 'an act concerning divorce and alimony,' passed March 11, 1853." 70 v. 259.

156. The act of March 30, 1874, entitled "an act to amend section 28 of the code of civil procedure, passed April 18, A.D. 1870." 71 v. 47.

157. The act of March 30, 1874, entitled "an act to amend section four hundred and sixty-four of 'an act to establish a code of civil procedure,' passed March 11, 1853." 71 v. 53.

158. The act of April 4, 1874, entitled "an act supplementary to an act entitled 'an act to exempt specific articles of personal property from execution,' passed April 16, 1873." 71 v. 59.

159. The act of April 16, 1874, entitled "an act to exempt from execution or seizure any fund set apart by benevolent associations or societies for the families of deceased members." 71 v. 76.

160. The act of March 4, 1875, entitled "an act to amend section ten of an act entitled 'an act for the maintenance and support of illegitimate children,' and to repeal said section so amended April 3, 1873." 72 v. 49.

161. The act of March 12, 1875, entitled "an act to amend section two hundred and forty-seven of the code of civil procedure." 72 v. 49.

162. The act of March 20, 1875, entitled "an act extending the powers of master commissioners." 72 v. 68.

163. The act of March 23, 1875, entitled "an act amendatory of and supplementary to the act passed April 23, 1872, 72 v.

entitled an act prescribing the mode of assessment and collection of compensation to the owners of private property appropriated by and to the use of corporations," except sections seven and eight.

72 v. 145. 164. The act of March 30, 1875, entitled "an act to amend section nine of an act entitled 'an act concerning divorce and alimony,' passed March 11, 1853, as amended March 1, 1870, and amended February 27, 1873, and amended January 6, 1875."

72 v. 167. 165. The act of March 30, 1875, entitled "an act to define and establish the practice in trials for the contesting of wills."

72 v. 167. 166. The act of March 30, 1875, entitled "an act to amend section seven of an act to provide for the collection of claims against steamboats and other water-crafts, and authorizing proceedings against the same by name."

73 v. 20. 167. The act of March 9, 1876, entitled "an act to amend section eleven of the act entitled 'an act relating to jurors,' passed April 26, 1873."

73 v. 100. 168. The act of March 28, 1876, entitled "an act to amend an act entitled 'an act to amend an act passed April 6, 1866, entitled an act supplementary to an act to establish a code of civil procedure, passed March 11, 1853,' passed April 3, 1867."

73 v. 127. 169. Section twenty-two [20], twenty-three [21], and thirty-one [29] of the act of April 8, 1876, entitled "an act to regulate the fees of probate judges, clerks of the courts, sheriffs, witnesses, jurors, fees in partitions, and to repeal certain acts therein named."

73 v. 140. 170. The act of April 8, 1876, entitled "an act to amend section four of the act entitled 'an act to relieve district courts, and to give greater efficiency to the judicial system of the state, passed April 12, 1858,' and to repeal said section four."

73 v. 148. 171. The act of March 31, 1876, entitled "an act to limit the time for commencing actions to revive judgments."

73 v. 210. 172. The act of April 11, 1876, entitled "an act supplemental to the several acts authorizing the appropriation of property for public uses."

74 v. 11. 173. The act of February 1, 1877, entitled "an act to amend section two of an act entitled "an act for the maintenance and support of illegitimate children, and to repeal certain acts therein named,' passed April 3, 1873."

74 v. 29. 174. The act of February 15, 1877, entitled "an act to amend section forty-eight of the act entitled 'an act to establish a code of civil procedure,' passed March 11, 1853,

74 v. 78. passed and took effect April 16, 1867."

175. The act of April 9, 1877, entitled "an act to amend section eleven of an act entitled 'an act authorizing and

74 v. 115. regulating arbitrations,' passed February 17, 1831."

176. The act of April 24, 1877, entitled "an act to amend sections five hundred and thirty-four, five hundred and

thirty-six, and five hundred and forty-one of 'an act to establish a code of civil procedure,' passed March 11, 1853."

177. The act of May 2, 1877, entitled "an act to amend section seventy of an act entitled 'an act to establish a code of civil procedure,' passed March 11, 1853, as amended April 3, 1862, as amended February 11, 1874." 74 v. 151.

178 The act of May 7, 1877, entitled "an act to amend section four of an act entitled 'an act to provide for the partition of real estate,' passed February 17, 1831, took effect June 1, 1831." 74 v. 152.

179. The act of May 3, 1877, entitled "an act to amend section two hundred of an act to establish a code of civil procedure." 74 v. 160.

180. The act of May 3, 1877, entitled "an act to amend section three hundred and thirteen of the code of civil procedure, as amended March 23, 1875." 74 v. 161.

181. The act of May 7, 1877, entitled "an act relating to dower and the mode of fixing the value in money of dower estates." 74 v. 201.

182. Section four of the act of May 7, 1877, entitled "an act to further consolidate land titles in Ohio." 74 v. 217.

TITLE IV. Error, Mandamus, and Quo Warranto.

CHAPTER 1. Jurisdiction and Procedure in Error.
CHAPTER 2. Mandamus.
CHAPTER 3. Quo Warranto.
CHAPTER 4. Repeals.

CHAPTER 1.

JURISDICTION AND PROCEDURE IN ERROR.

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What is a final order.

SECTION 1. An order affecting a substantial right in an action, when such order in affect determines the action and prevents a judgment, and an order affecting a substantial right made in a special proceeding or upon a summary application in an action after judgment, is a final order which may be vacated, modified, or reversed, as provided in this title. [Civil Code, § 512, S. & C. 1099.]

Jurisdiction of the common pleas in error.

SEC. 2. A judgment rendered or final order made by a probate court, justice of the peace, or any other tribunal, board, or officer, exercising judicial functions, and inferior in jurisdiction to the court of common pleas, may be reversed, vacated, or modified by the court of common pleas. [Civil Code, § 511, S. & C. 1099.]

Jurisdiction of the district court in error.

SEC. 3. A judgment rendered or final order made by the court of common pleas, or any superior court, may be reversed, vacated, or modified by the district court, for errors appearing on the record. [Civil Code, § 513, S. & C. 1100.]

Jurisdiction of the supreme court in error.

SEC. 4. A judgment rendered or final order made by any court, board, or tribunal mentioned in the last two sections, may be reversed, vacated, or modified by the supreme court, for errors appearing on the record; but the petition in error, in such case, except as to a judgment or final order of the district court, can be filed only by leave of the supreme court, or a judge thereof. [Civil Code, § 514, S. & C. 1100.]

The record in the supreme court must be printed.

SEC. 5. When a petition in error is filed in the supreme court, so much of the record to be reviewed as will show the error complained of shall be printed, and ten of the printed copies thereof filed with the papers. The plaintiff may have the printing done, or deposit with the clerk money sufficient therefor; and if he fail, for sixty days after filing the petition, to file such printed copies, or make such deposit, the petition shall be dismissed, unless the court, on good cause shown, extend the time, or dispense with such printing. The expense of printing shall be taxed as part of the costs.

When the supreme court shall assess a penalty.

SEC. 6. When, in any such case, the judgment or final order of a district court is affirmed, there shall be taxed, as part of the costs in the case, a reasonable fee, to be fixed by the court, not less than twenty-five nor more than three hundred dollars, to the counsel of the defendant; and the court shall adjudge to the defendant damages in such sum as may be reasonable, not exceeding five hundred dollars, unless the judgment or final order of the district court directs the payment of money, and execution thereof was stayed in such proceeding in error in the supreme court, when, in lieu of such penalty, it shall bear additional interest, at a rate not exceeding five per centum per annum, for the time for which it was stayed, to be ascertained and awarded by the court; but if the supreme court certify in its judgment that there was reasonable cause for the proceeding in error, neither such fee, nor additional interest, nor penalty, shall be taxed, adjudged, or awarded.

Supreme court not required to review evidence.

SEC. 7. In no case in error in the supreme court shall it be required to review the findings of fact, upon the evidence, by the court or jury in the inferior tribunal.

When district court, on error, must find the facts.

SEC. 8. When it is assigned for error in the district court, that the verdict or finding of fact in the inferior tribunal is against the evidence, or is not sustained by sufficient evidence, the district court, whether it decide the case, or reserve it to the supreme court, shall, on application of a party, make and embody in the record a finding of the facts.

When district court, on appeal, must find the facts.

SEC. 9. In all cases taken to the district court by appeal, and tried in that court without a jury, the court, on application of a party, shall make a finding of facts from the evidence, and embody the same in the record, whether it decide the case, or reserve it to the supreme court.

Petition and summons in error.

SEC 10. The proceedings to obtain such reversal, vacation, or modification, shall be by petition in error, filed in a court having power to make the reversal, vacation, or modification, setting forth the errors complained of; and thereupon a summons shall issue and be served, or publication made, as in the commencement of an action. A service on the attorney of record in the original case shall be sufficient. The summons shall contain a statement that a petition in error has been filed in the case; and if issued in vacation, it shall be returnable on or before the first day of the term of the court, and if issued in term time, it shall be returnable on a day therein named. If the last publication, or service of the summons, be made ten days before the end of the term, the case shall stand for hearing at that term; but the supreme court, on the hearing of a motion for leave to file a petition in error, whereof ten days' personal notice has been given to the adverse party, or his attorney, may, in its discretion, at the time of granting such leave, if error, for which the judgment or final order should be reversed, vacated, or modified, plainly appear on the record, and all the judges sitting at the hearing concur therein, enter a judgment of reversal,

vacation, or modification, without the issue or service of a summons in error. [Civil Code, § 515, 72 v. 172, § 1.]

Issue and service of summons.

SEC. 11. The summons mentioned in the last section shall, upon the written precipe of the plaintiff in error, or his attorney, be issued by the clerk of the court in which the petition is filed, to the sheriff of any county in which the defendant in error, or his attorney of record is found; and if the writ is issued to a foreign county, the sheriff thereof may return it by mail to the clerk, and shall be entitled to the same fees as if it had been returnable to the court of common pleas of the county in which such officer resides. The defendant in error, or his attorney, may waive in writing the issue or service of the summons. [Civil Code, § 516, S. & C. 1103.]

When summons must not issue.

SEC. 12. A summons in error shall not be issued in a case in which there is, upon the minutes of the court, or among the files of the case, a waiver of error by the party endeavoring to commence such proceedings, or his attorney, unless the court in which the petition is to be filed, or a judge thereof, indorse on the same permission to issue the summons. [Civil Code, § 609, S. & C. 1135.]

What must be filed with petition in error.

SEC. 13. The plaintiff in error shall file with his petition either a transcript of the final record, or a transcript of the docket or journal entries, with such original papers or transcripts thereof as are necessary to exhibit the error complained of; and, if original papers and pleadings are filed, and the final record has not been made, the reviewing court may permit the temporary withdrawal of the originals for a reasonable time, to allow the recording thereof, or direct copies thereof to be made and filed, and the originals to be returned to the inferior tribunal. [Civil Code, § 517; 67 v. 114, § 6.]

Transcript must be furnished upon tender of proper fees.

SEC. 14. Probate judges, justices of the peace, and other judicial tribunals having no clerk, and the clerks of every court of record, shall, upon request, and being paid the lawful fees therefor, furnish an authenticated transcript of the proceedings, containing the judgment or final order in said courts, to either of the parties to the same, or to any person interested in procuring such transcript. [Civil Code, § 518, S. & C. 1104.]

How execution of judgment may be stayed.

SEC. 15. No proceeding to reverse, vacate, or modify a judgment or final order rendered in the probate court, court of common pleas, superior court, or district court, except as provided in the fourth subdivision of this section, and in sections seventeen and eighteen, shall operate to stay execution, unless the clerk of the court in which the record of such judgment or final order is made take a written undertaking, to be executed on the part of the plaintiff in error to the adverse party, with sufficient surety, as follows:

1. When the judgment or final order sought to be reversed directs the payment of money, the written undertaking shall be in double the amount of the judgment or order, to

the effect that the plaintiff in error will pay the condemnation money, and costs, if the judgment or final order be affirmed, in whole or in part.

2. When it directs the execution of a conveyance, or other instrument, the undertaking shall be in such sum as may be prescribed by a court of record, or a judge thereof, to the effect that the plaintiff in error will abide the judgment, if the same be affirmed, and pay the costs.

3. When it directs the sale, or delivery of possession, of real property, the undertaking shall be in such sum as may be prescribed by a court of record, or a judge thereof, to the effect that, during the possession of such property by the plaintiff in error, he will not commit, nor suffer to be committed, any waste thereon, and that, if the judgment be affirmed, he will pay the value of the use and occupation of the property from the date of the undertaking until the delivery of the possession, pursuant to the judgment, and all costs. When the judgment is for the sale of mortgaged premises and the payment of a deficiency arising from the sale, the undertaking must also provide for the payment of such deficiency.

4. When it directs the assignment or delivery of documents, they may be placed in the custody of the clerk of the court in which the judgment was rendered, to abide the judgment of the reviewing court, or the undertaking shall be in such sum as may be prescribed as aforesaid, to abide the judgment, and pay costs, if the judgment be affirmed. [Civil Code, § 519, S. & C. 1104.]

Undertaking must be approved.

SEC. 16. Before the written undertaking mentioned in section fifteen shall operate to stay execution of the judgment or order, the execution of the undertaking and the sufficiency of the sureties must be approved by the court in which the judgment was rendered or order made, or by the clerk thereof; and the clerk shall indorse such approval, signed by himself, upon the undertaking, and file the same in his office for the defendant in error. [Civil Code, § 521, S. & C. 1105.]

Substitute for undertaking.

SEC. 17. Instead of the undertaking prescribed in the second subdivision of section fifteen, the conveyance or other instrument may be executed, and deposited with the clerk of the court in which the judgment was rendered, or order made, to abide the judgment of the reviewing court. [Civil Code, § 520, S. & C. 1105.]

Executors, etc., need not give bond on error.

SEC. 18. Executors, administrators, and guardians, who have given bond in this state, with surety, according to law, shall not be required to give the undertaking mentioned in section fifteen. [Civil Code, § 607, S. & C. 1135.]

When execution may be issued after undertaking given.

SEC. 19. In an action on a contract for the payment of money only, or in an action for injuries to the person, if the defendant in error give adequate security to make restitution in case the judgment be reversed or modified, he may, on leave obtained from the court below, or a judge thereof

in vacation, proceed to enforce the judgment, notwithstanding the execution of the undertaking to stay proceedings. Such security must be an undertaking executed to the plaintiff in error, by at least two sufficient sureties, to the effect that if the judgment be reversed or modified, he will make full restitution to the plaintiff in error of the money by him received under the judgment. The provisions of this section shall not apply to judgments recovered in actions for libel, slander, malicious prosecution, false imprisonment, or assault and battery. [Civil Code, § 522, 71 v. 106.]

Limitations.

SEC. 20. No proceeding to reverse, vacate, or modify a judgment or final order shall be commenced unless within two years after the rendition of the judgment or the making of the final order complained of; or, in case the person entitled to such proceeding is an infant, a married woman, a person of unsound mind, or imprisoned, within two years as aforesaid, exclusive of the time of such disability. [Civil Code, § 523, S. & C. 1106.]

How execution of judgment of justice stayed on error.

SEC. 21. No proceeding to reverse, vacate, or modify a judgment rendered, or final order made, by a justice of the peace, shall operate as a stay of execution, unless the clerk of the court of common pleas take a written undertaking to the defendant, executed on the part of the plaintiff in error by sufficient surety, to the effect that the plaintiff will pay all the costs which have accrued or may accrue on such proceedings in error, together with the amount of any judgment that may be rendered against such plaintiff in error, either on the further trial of the cause, after the judgment of the court below is set aside or reversed, or upon and after the affirmance thereof in the court of common pleas. When the judgment or final order of a justice, sought to be reversed, directs the delivery of possession of real property, the undertaking shall be in such sum as may be prescribed by the court of common pleas, or a judge thereof, or, in the absence of such judge, by the probate judge of the county, to the effect that, during the possession of such property by the plaintiff in error, he will not commit, nor suffer to be committed, any waste thereon, and that if the judgment be affirmed, he will pay the value of the use and occupation of the property from the date of the undertaking until the delivery of the property, pursuant to the judgment, and costs. The person entitled to such proceedings shall have the same time for prosecuting the same, before he is barred, as is provided in the last section, unless the judgment be paid off or satisfied prior to the commencement of such proceedings. [Civil Code, § 526, S. & S. 568.]

Terms of stay of execution in other cases.

SEC. 22. Execution of a judgment or final order, other than those enumerated in this chapter, of any judicial tribunal, may be stayed, on such terms as may be prescribed by the court in which the petition in error is filed, or by a judge thereof. [Civil Code, § 525, S. & S. 570.]

Proceedings after reversal.

SEC. 23. When a judgment or final order is reversed, either in whole or in part, in the court of common pleas, the district court, or supreme court, the court reversing the same shall proceed to render such judgment as the court below should have rendered, or remand the cause to the court below for such judgment; and the district court or common pleas court so reversing a judgment shall, upon the request of either party, specify in writing the ground or grounds of such reversal, which shall be filed and kept with the papers in the case. The court reversing or affirming such judgment or final order shall not issue execution in causes that are so brought before it on error, on which it pronounced judgment, as aforesaid, but shall send a special mandate to the court below, as the case may require, for execution thereon; the court to which such special mandate is sent shall proceed in the same manner as if such judgment or final order had been rendered therein; and on motion, and good cause shown, it may suspend any execution made returnable before it by order of the court of common pleas, the district court, or supreme court, in the same manner as if the execution had been issued from its own court; but such suspension shall not extend further than to stay proceedings until the matter can be further heard by the court of common pleas, the district court, or supreme court, as the case may be. This section shall not apply to judgments of justices of the peace. [Civil Code, § 526, 67 v. 115, § 7.]

Costs on error.

SEC. 24. When a judgment or final order is reversed, the plaintiff in error shall recover his costs, and when reversed in part, and affirmed in part, the court may apportion the costs between the parties, in such manner as it deems equitable. [Civil Code, § 527, S. & C. 1107.]

Misprision of clerk not ground for reversal.

SEC. 25. A mistake, neglect, or omission of the clerk shall not be a ground of error, until the same has been presented and acted upon in the court in which the mistake, neglect, or omission occurred. [Civil Code, § 528, S. & C. 1108.]

Rendering judgment prematurely not error.

SEC. 26. The rendering of judgment before the action stood for trial according to the provisions of title one, part third, shall be deemed a clerical error. [Civil Code, § 529, S. & C. 1109.]

Penalty on affirmance by district court.

SEC. 27. If the district court affirm a judgment on petition in error, it shall also render judgment against the plaintiff in error for five per centum upon the amount due from him to the defendant in error, unless the court enter upon its minutes that there was reasonable ground for the proceedings in error. [Civil Code, § 608, S. & C. 1135.]

Writs of error and certiorari abolished.

SEC. 28. Writs of error and certiorari to reverse, vacate, or modify judgments or final orders in civil cases are abolished; but courts shall have the same power to compel transcripts of the proceedings containing the judgment or final order sought to be reversed, to be furnished, completed, or perfected, as they heretofore had under writs of error and certiorari. [Civil Code, § 530, S. & C. 1108.]

Proceedings when judgment of justice affirmed.

SEC. 29. If the judgment of a justice of the peace, taken on error as herein provided to the court of common pleas, be affirmed, such court shall render judgment against the plaintiff in error for the costs of suit, and award execution therefor; and the court shall thereupon order its clerk to certify its decision to the justice, so that the judgment affirmed may be enforced as if such proceedings in error had not been taken; or, such court may award execution to carry into effect the judgment of the justice, in the same manner as if the judgment had been rendered in the court of common pleas. [Civil Code, § 531, S. & C. 1108.]

Proceedings when judgment of justice reversed.

SEC. 30. When the proceedings of a justice of the peace are taken on error to the court of common pleas, in manner aforesaid, and the judgment of such justice is reversed or set aside, the court shall render judgment of reversal, and for the costs that have accrued up to that time, in favor of the plaintiff in error, and award execution therefor; and the cause, except when the reversal is because the justice had no jurisdiction of the plaintiff in error, or of the subject of the action, shall be retained by the court for trial and final judgment, as in cases of appeal. [Civil Code, § 532, 67 v. 115, § 6.]

Decrees in chancery, how reviewed.

SEC. 31. The final orders or decrees of courts of chancery heretofore rendered, or which may hereafter be rendered, in any chancery proceeding pending on July 1, 1853, may be reviewed in the manner provided in the five succeeding sections, and within the time prescribed in section twenty; and all suits in chancery pending at that time may be prosecuted to final decree in like manner as if this title had not taken effect. [Civil Code, § 533, S. & C. 1109.]

Bill of review.

SEC. 32. When a party, complainant or defendant, seeks a review of a final decree or order in chancery, he may file in the clerk's office of the court in which the decree was rendered, a short petition, setting forth the names of the parties to such suit, the substance of the decree or order sought to be reviewed, and an assignment of the errors relied upon to reverse or set aside such decree or order, and a prayer for such reversal; and errors in law and in fact may be assigned at the same time. [46 v. 90, § 1, S. & C. 1110.]

Process thereon.

SEC. 33. On the filing of such petition, the clerk shall issue a summons against all the parties to the original suit, except such as are petitioners in the suit of review, as in other cases. [46 v. 90, § 2, S. & C. 1112.]

Original papers to be used.

SEC. 34. All the original papers and evidence in the original cause, and the entries made, shall be used on the hearing of the bill of review; and it shall not be necessary for the party to procure a copy of the record of proceedings in the original cause, nor shall it be necessary to recite, in the bill of review, any of the facts set forth in the pleadings in the original cause. [46 v. 90, § 3, S. & C. 1112.]

SEC. 35. When a petition for review is filed in the district court, a judge of the court may, in vacation, and upon

good cause shown, stay proceedings on the former decree until the next term of the court in which such proceedings are pending; and the judge shall direct the nature and amount of security to be given by the party applying for such stay. [49 v. 26, § 1, S. & C. 1112.]

How decree in district court may be stayed.

SEC. 36. When such petition is filed in the common pleas, the judge of such court may exercise the same power, on the same terms. [49 v. 26, § 2, S. & C. 1112.]

The same in common pleas.

SEC. 37. A petition in error, in the nature of a bill of review, may, on leave of the supreme court, or a judge thereof, be filed in the supreme court, to reverse or modify any decree in chancery that heretofore has been or that hereafter may be rendered in any district court in this state, in which the title to real estate is in controversy, or the amount in controversy is not less than five hundred dollars; and the proceedings upon such petition in error shall, in all respects, be governed by the provisions of the six preceding sections of this chapter; but this section shall not extend to suits that have been commenced since the first day of July, 1853, and the petition in error must be filed within three years after the rendition of the decree so sought to be reversed or modified. [53 v. 178, § 4, S. & C. 1152.]

Petition in error in the nature of a bill of review.

CHAPTER 2.

MANDAMUS.

SECTION
1. Mandamus—what it is.
2. By what courts i may be issued.
3. Application for the writ.
4. When it may not issue.
5. When peremptory writ may issue in the first instance.
6. The allowance of the writ.
7. Who to issue the writ, what it shall contain, and service thereof.
8. When defendant may demur or answer.
9. Reply and demurrer.
10. Judgment on default.
11. Pleadings considered as in a civil action.
12. Issues of fact—how tried.
13. What damages may be recovered.
14. Such recovery shall be a bar.
15. Costs against relator.
16. Penalties.
17. When county auditor to levy and assess tax.
18. Auditor is an officer of court; his fees.
19. The last two sections not to limit power of court.

SECTION 1. Mandamus is a writ issued in the name of the state, to an inferior tribunal, a corporation, board, or person, commanding the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station. [Civil Code, § 569, S. & C. 1124.]

Mandamus—what it is.

SEC. 2. The writ can only be issued by the supreme court or the district court; and although it may require an inferior tribunal to exercise its judgment, or to proceed to the discharge of any of its functions, it can not control judicial discretion. [Civil Code, § 570, S. & C. 1126.]

By what courts it may be issued.

Application for the writ.

SEC. 3. The application for the writ must be by petition in the name of the state, on the relation of the person applying, and verified by affidavit; and the court may require a notice of the application to be given to the defendant, or may grant an order to show cause why it should not be allowed, or may allow the writ without notice. [Civil Code, § 573, S & C. 1127.]

When it may not issue.

SEC. 4. The writ must not be issued in a case where there is a plain and adequate remedy in the original course of the law. It may issue on the information of the party beneficially interested. [Civil Code, § 570, S. & C. 1126.]

When peremptory writ may issue in the first instance.

SEC. 5. When the right to require the performance of the act is clear, and it is apparent that no valid excuse can be given for not performing it, a court may, in the first instance, allow a peremptory mandamus. In all other cases an alternative writ must first be issued, on the allowance of the court, or a judge thereof. [Civil Code, § 572, S. & C. 1127.]

The allowance of the writ.

SEC. 6. The allowance of the writ, and an order that the defendant, immediately upon service, do the act required to be performed, or, when an alternative writ is allowed, that he do the act, or show cause before the court, at a specified time and place, why he does not do the act, shall be entered on the journal. [Civil Code, § 574, S. & C. 1127.]

Who to issue the writ, what it shall contain, and service thereof.

SEC. 7. The writ shall be issued by the clerk of the court in which the application is made, and shall contain a copy of the petition, verification, and order of allowance, and shall be served upon the defendant personally, by copy, by the sheriff of the proper county, or by a person specially authorized by the court or judge. Such officer or person shall report his proceedings therewith to the court; and if the service be made by a person not an officer, the return must be verified by his affidavit. [Civil Code, § 571, S. & C. 1126.]

When defendant may demur or answer.

SEC. 8. On the return day of an alternative writ, or such further day as the court may allow, the defendant may answer as in a civil action; or, if the writ be allowed by a single judge, he may demur. [Civil Code, § 575, S. & C. 1127.]

Reply and demurrer.

SEC. 9. The plaintiff may demur to the answer, or reply to any new matter therein; and the defendant may demur to the reply as in a civil action. [Civil Code, § 576, S. & C. 1127.]

Judgment on default.

SEC. 10. If no answer be made, a peremptory mandamus must be allowed against the defendant. [Civil Code, § 576, S. & C. 1127.]

Pleadings considered as in a civil action.

SEC. 11. The pleadings shall have the same effect, and must be construed, and may be amended, as in civil actions. [Civil Code, § 577, S. & C. 1127.]

Issues of fact—how tried.

SEC. 12. Issues of fact made by the pleadings must be tried, and the further proceedings thereon had, in the same manner as in civil actions. [Civil Code, § 577, S. & C. 1127.]

What damages may be recovered.

SEC. 13. If judgment be given for the plaintiff, the relator may recover the damages which he has sustained—to be ascertained by the court, or a jury, or by a referee or master, as in a civil action—and costs; and a peremptory mandamus shall also be granted to him without delay. [Civil Code, § 578, S. & C. 1128.]

Such recovery shall be a bar.

SEC. 14. Such recovery of damages against a defendant shall be a bar to any other action upon such cause of action. [Civil Code, § 579, S. & C. 1128.]

Costs against relator.

SEC. 15. If judgment be given for the defendant, all costs shall be adjudged against the relator.

Penalties.

SEC. 16. When a peremptory mandamus has been directed to a public officer, body, or board, commanding the performance of a public duty specially enjoined by law, and the court finds that such officer, or any member of such body or board, has, without just excuse, refused or neglected to perform the duty so enjoined, the court may impose a fine, not exceeding five hundred dollars, upon such officer or member. Such fine, when collected, shall be paid into the treasury of the county wherein the duty ought to have been performed; and the payment thereof shall be a bar to an action for any penalty incurred by such officer or member, by reason of such refusal or neglect. [Civil Code, § 580, S. & C 1128.]

When county auditor to levy and assess tax.

SEC. 17. When a peremptory mandamus has been awarded against the commissioners of a county, or the trustees or board of education of a township, or the council, trustees, or board of education of a municipal corporation, to levy and assess a tax to pay interest upon a debt, or to create a sinking fund for the payment of a funded debt, and such officers have resigned, or refuse or neglect to levy and assess such tax, or their offices are vacant, the court, upon the motion of an interested person, and upon being satisfied of the fact of such resignation, vacancy, or refusal or neglect to levy such tax, and of the right of such person to have the same levied and assessed, may cause a special order to be issued to the auditor of the proper county, commanding him to levy and assess upon the taxable property of the county, township, or municipal corporation, the taxes required by law, or the judgment or order of said court, to be levied and assessed for the purposes aforesaid, and to place the same upon the duplicate for collection by the county treasurer. [63 v. 15, § 1, S. & S. 604.]

Auditor is an officer of court; his fees.

SEC. 18. When such special order is issued to the auditor, he shall be responsible for the execution thereof in the same manner as if he were an officer of the court; and he shall receive such fees for his services in executing the order, if not otherwise fixed by the court, as he is allowed by law for making tax duplicates; which fees, and all other costs of the proceeding, he shall add to the taxes levied in executing such order, and place the same upon the duplicate for collection with such taxes. [63 v. 15, § 2, S. & S. 604.]

The last two sections not to limit power of court.

SEC. 19. The provisions of the last two sections shall not be construed to limit the power of the court to carry its order and judgment into execution, or to punish any officer named therein for contempt or disobedience of its orders or writs. [63 v. 15, § 3, S. & S. 604.]

CHAPTER 3.

QUO WARRANTO.

SECTION
1. When proceedings in quo warranto may be instituted against a person.
2. When against a corporation.
3. Who may commence action.
4. Upon whose relation.
5. Who may commence action in case of usurpation of office.
6. Who to prosecute in absence of prosecuting attorney.
7. What petition to set forth in action against person for usurpation of office.
8. All claiming same office or franchise to be made defendants.
9. Where action to be brought.
10. Application for leave to file petition, and notice to defendant.
11. Issue of summons, and service.
12. Service by publication.
13. Pleadings after petition.
14. Court may extend time for pleading.
15. Judgment where office, franchise, etc., found to have been usurped.
16. Judgment where director of a corporation found to have been illegally elected.
17. When court may order new election in such case.
18. Rights of person adjudged to be entitled to an office.
19. Action for damages against person ousted.
20. How judgment of court enforced.
21. Judgment when corporation has forfeited its rights.
22. Appointment of trustees when corporation dissolved.
23. Powers and duties of trustees.
24. How trustees placed in possession.
25. Judgment for costs.
26. Proceedings to enforce judgment ordering delivery of property.
27. When injunction allowed ancillary to proceedings in quo warranto against banking association.
28. Court may require bank directors to give security, etc.
29. Directors may be enjoined from borrowing or issuing money, etc.
30. Limitations.
31. Action for damages against officers, etc., of corporation.
32. Provisions of this chapter cumulative to other remedies.
33. Disposition of fines.
34. Actions under this chapter to have precedence, etc.

When proceedings in quo warranto may be instituted against a person.

SECTION 1. A civil action may be brought in the name of the state—

1. Against a person who usurps, intrudes into, or unlawfully holds or exercises, a public office, civil or military, or a franchise, within this state, or an office in a corporation created by the authority of this state.

2. Against a public officer, civil or military, who does or suffers an act which, by the provisions of law, works a forfeiture of his office.

3. Against an association of persons who act as a corporation within this state without being legally incorporated. [36 v. 68, § 1, S. & C. 1264.]

When against a corporation.

SEC. 2. A like action may be brought against a corporation—

1. When it has offended against a provision of an act for its creation, or renewal, or any act altering or amending such acts.

2. When it has forfeited its privileges and franchises by non-user.

3. When it has committed or omitted an act which amounts to a surrender of its corporate rights, privileges, and franchises.

4. When it has misused a franchise or privilege conferred upon it by law, or exercised a franchise or privilege not so conferred. [36 v. 68, § 8, S. & C. 1264.]

Who may commence action.

SEC. 3. The attorney general, or a prosecuting attorney, when directed by the governor, supreme court, or general assembly, shall commence any such action; and when, upon complaint, or otherwise, he has good reason to believe that any case specified in section two can be established by proof, he shall commence an action. [36 v. 68, §§ 1, 8, S. & C. 1264; 50 v. 267, §§ 9, 10, 11, 12, S. & C. 88.]

Upon whose relation.

SEC. 4. Such officer may, upon his own relation, bring any such action, or he may, on leave of the court, or a judge thereof in vacation, bring the action upon the relation of another person; and if the action be brought under the first subdivision of section one, he may require security for costs, to be given as in other cases. [36 v. 68, § 1, S. & C. 1264; 37 v. 70, S. & C. 1270.]

Who may commence action in case of usurpation of office.

SEC. 5. A person claiming to be entitled to a public office unlawfully held and exercised by another may, by himself or an attorney at law, upon giving security for costs, bring an action therefor. [37 v. 70, § 1, S. & C. 1270.]

Who to prosecute in absence, etc., of prosecuting attorney.

SEC. 6. When the office of prosecuting attorney is vacant, or when the prosecuting attorney is absent, interested in the action, or disabled from any cause, the court, or a judge thereof in vacation, may direct or permit any member of the bar to act in his place to bring and prosecute the action. [36 v. 68, § 23, S. & C. 1269.]

What petition to set forth in action against person for usurpation of office. Judgment.

SEC. 7. When the action is against a person for usurping an office, the petition shall set forth the name of the person who claims to be entitled thereto, with an averment of his right thereto; and judgment may be rendered upon the right of the defendant, and also upon the right of the person so averred to be entitled, or only upon the right of the defendant, as justice requires. [36 v. 68, § 3, S. & C. 1265.]

All claiming same office or franchise to be made defendants.

SEC. 8. All persons who claim to be entitled to the same office or franchise may be made defendants in the same action, to try their respective rights to such office or franchise. [36 v. 68, § 7, S. & C. 1266.]

Where action to be brought

SEC. 9. An action under this chapter can be brought only in the supreme court, or in the district court of the county in which the defendant, or one of the defendants, resides or is found, or when the defendant is a corporation, in the county in which it is situated, or has a place of business; but if the attorney general file the petition, the action may be brought in the district court of Franklin county. [36 v. 68, § 1, S. & C. 1264; 50 v. 267, § 13, S. & C. 89.]

Application for leave to file petition, and notice to defendant.

SEC. 10. Upon application for leave to file a petition, the court or judge may direct notice thereof to be given to the defendant previous to granting such leave, and may hear the defendant in opposition thereto; and if leave be granted, an entry thereof shall be made on the journal, or, the fact shall be indorsed by the judge on the petition, which shall then be filed. [36 v. 68, § 9, S. & C. 1267.]

Issue of summons, and service.

SEC. 11. When the petition is filed without leave and notice, a summons shall issue, and be served as in other cases; and such summons may be sent to and returned by the sheriff of any county by mail, who shall be entitled to the same fees thereon as if it had been issued and returned in his own county. [36 v. 68, § 2, S. & C. 1265.]

Service by publication.

SEC. 12. When a summons is returned not served because the defendant, or its officers or office, cannot be found within the county, the clerk shall publish, for four consecutive weeks, in a newspaper published and of general circulation in the county, and if there is no such newspaper, then in a newspaper printed in this state, and of general circulation in such county, a notice, setting forth the filing and substance of the petition; and upon proof of such publication, the default of the defendant may be entered, and judgment rendered thereon as if the defendant had been served with summons. [36 v. 68, § 13, S. & C. 1268.]

Pleadings after petition.

SEC. 13. The defendant may demur, or file an answer, which may contain as many several defenses as he has, within thirty days after the filing of the petition, if it was filed on leave and notice, or after the return day of the summons; and the plantiff may file a demurrer or a reply to such answer within thirty days thereafter. [36 v. 68, § 12, S. & C. 1268.]

Court may extend time for pleading.

SEC. 14. An order may be made by the court, or a judge thereof, extending the time within which any pleading may be filed; but such order shall not work a continuance of the case. [36 v. 68, § 14, S. & C. 1268.]

Judgment where office, franchise, etc., found to have been usurped.

SEC. 15. When a defendant is found guilty of usurping, intruding into, or unlawfully holding or exercising, an office, franchise, or privilege, judgment shall be rendered that such defendant be ousted and altogether excluded therefrom, and that the relator recover his costs. [36 v. 68, § 15, S. & C. 1268.]

SEC. 16. If the action be against a director of a corpora-

tion, and the court find that at his election, either illegal votes were received, or legal votes were rejected, or both, sufficient to change the result, judgment may be rendered that the defendant be ousted, and of induction in favor of the person who was entitled to be declared elected at such election. [70 v. 176, § 1.]

Judgment where director of a corporation found to have been illegally elected.

SEC. 17. In a case named in the last section, the court may order a new election to be held, at a time and place, and by judges, appointed by the court, notice of which election, and naming the judges, shall be given for the time and in the manner provided by law for notice of elections of directors of such corporation; the order of the court shall become obligatory upon the corporation and its officers when a duly certified copy thereof is served upon its secretary personally, or left at its principal office; and the court may enforce its order by attachment, or in any other manner it deems necessary. (70 v. 176, § 2.]

When court may order new election in such case.

SEC. 18. If judgment be rendered in favor of the person averred to be entitled to an office, he may, after taking the oath of office, and executing any official bond required by law, take upon him the execution of the office; and he shall immediately thereafter demand of the defendant all the books and papers in his custody or within his power appertaining to the office from which he has been ousted. [36 v. 68, § 4, S. & C. 1266.]

Rights of person adjudged to be entitled to an office.

SEC. 19. Such person may, at any time within one year after the date of such judgment, bring an action against the party ousted, and recover the damages he sustained by reason of such usurpation. [36 v. 68, § 6, S. & C. 1266.]

Action for damages against person ousted.

SEC. 20. If such defendant refuse or neglect to deliver over any such book or paper pursuant to such demand, he shall be deemed guilty of a contempt of court, and shall be fined in any sum not exceeding ten thousand dollars, and imprisoned in the jail of the county until he complies with the order of the court, or is otherwise discharged by due course of law. [36 v. 68, § 6, S. & C. 1266.]

How judgment of court enforced.

SEC. 21. When in any such action, it is found and adjudged that a corporation has, by an act done or omitted, surrendered or forfeited its corporate rights, privileges, and franchises, or has not used the same during a term of five years, judgment shall be entered that it be ousted and excluded therefrom, and that it be dissolved; and when it is found and adjudged that a corporation has offended in any matter or manner which does not work such surrender or forfeiture, or has misused a franchise, or exercised a power not conferred by law, judgment shall be entered that it be ousted from the continuance of such offense, or the exercise of such power. [43 v. 94, § 1, S. & C. 1271.]

Judgment when corporation has forfeited its rights.

SEC. 22. The court rendering a judgment dissolving a corporation shall appoint trustees of the creditors and stockholders of the corporation, who, after giving an undertaking, payable to the state of Ohio, in such sum and

Appointment of trustees when corporation dissolved.

with such sureties as the court may designate and approve, conditioned that they will faithfully discharge their trust, and properly pay and apply all money that may come into their hands, shall have power to settle the affairs of the corporation, collect and pay outstanding debts, and divide among the stockholders the money and other property which remain after the payment of debts and necessary expenses. [43 v. 94, § 2, S. & C. 1271.]

Powers and duties of trustees.

SEC. 23. The trustees shall forthwith demand all money, property, books, deeds, notes, bills, obligations, and papers of every description within the custody, power, or control of the officers of the corporation, or either of them, belonging to the corporation, or in any wise necessary for the settlement of its affairs, or for the dicharge of its debts and liabilities; and they may sue for and recover the demands and property of the corporation, and shall be jointly and severally liable to the creditors and stockholders, to the extent of its property and effects which come into their hands. [36 v. 68, § 19, S. & C. 1268.]

How trustees placed in possession.

SEC. 24. An officer of such corporation who refuses or neglects to deliver over any such money, or other things, pursuant to such demand, shall be deemed guilty of a contempt of court, and shall be fined not exceeding ten thousand dollars, and imprisoned in the jail of the proper county until he complies with the order of the court, or is otherwise discharged by due course of law; and he shall be liable to the trustees for the value of all money, or other things, so refused or neglected to be surrendered, together with all damages that have been sustained by the stockholders and creditors of the corporation, or any of them, in consequence of such neglect or refusal. [36 v. 68, § 20, S. & C. 1269.]

Judgment for costs.

SEC. 25. If judgment be rendered against a corporation, or against a person claiming to be a corporation, the court may render judgment for costs against the directors or other officers of the corporation, or against the person claiming to be a corporation. [36 v. 68, § 17, S. & C. 1268.]

Proceedings to enforce judgment ordering delivery of property.

SEC. 26. In all actions under this chapter, when the judgment is against the defendant the court may make an order directing the defendant forthwith to deliver over the books, papers, property, money, deeds, notes, bills, and obligations to the persons entitled thereto, or the trustees appointed to receive the same, and may send a transcript of the proceedings, including a copy of such order, to the court of common pleas of the proper county, with a special mandate directing such court to carry the same into effect; and upon complaint being made upon affidavit to such court of common pleas, of a neglect or refusal to comply with such order, that court shall direct an attachment, returnable forthwith, to issue for the defendant, who may be required to answer under oath touching the premises; and if it appear that the defendant so neglects or refuses, it shall render judgment of fine or im-

prisonment, or both, as the court making the order might have rendered. [36 v. 68, § 21, S. & C. 1269.]

When injunction allowed ancillary to proceedings in quo warranto against banking association.

SEC. 27. Any stockholder, or stockholders, owning not less than one-fourth of the capital stock of any banking association actually paid in, or entitled to the beneficial interest therein, may have, pending proceedings in quo warranto against such corporation, an injunction restraining the directors thereof from making any disposition of the assets of such corporation prejudicial to the interests of such stockholder or stockholders, or inconsistent with their duties as directors. [57 v. 50, § 2, S. & C. 1272.]

Court may require bank directors to give security, etc.

SEC. 28. The court, or a judge thereof in vacation, may, upon satisfactory proof that the directors of such corporation have violated, or are about to violate, any of the franchises thereof, require them to give security to the stockholders thereof, to the satisfaction of the court or judge, for the proper discharge of their duties, and for the proper management and security of the assets; and such court or judge may enjoin such directors from paying out or issuing the notes of circulation of such bank, and from incurring any additional liabilities except for the payment of the necessary services of the officers and employés of such banking association, the amount of which, while such proceedings are pending, shall be under the control of the court. [57 v. 50, § 2, S. & C. 1272.]

Directors may be enjoined from borrowing or issuing money, etc.

SEC. 29. Such court or judge may, on petition, enjoin such directors as aforesaid, from borrowing or issuing, either directly or indirectly, any of the money or assets of such bank for their individual benefit, while such proceedings are pending. [57 v. 50, § 3, S. & C. 1272.]

Limitations.

SEC. 30. Nothing in this chapter contained shall authorize an action against a corporation for forfeiture of charter, unless the same be commenced within five years after the act complained of was done or committed; nor shall an action be brought against a corporation for the exercise of a power or franchise under its charter, which it has used and exercised for a term of twenty years; nor shall an action be brought against an officer to oust him from his office, unless within three years after the cause of such ouster, or the right to hold the office, arose. [36 v. 68, § 26, S. & C. 1270.]

Action for damages against officers, etc., of ousted corporation.

SEC. 31. When judgment of forfeiture and ouster is rendered against a corporation because of any misconduct of the officers or directors thereof, a person injured thereby may, at any time within one year thereafter, in an action against such officers or directors, recover the damages he has sustained by reason of such misconduct. [36 v. 68, § 22, S. & C. 1269.]

Provisions of this chapter cumulative to other remedies.

SEC. 32. Nothing in this chapter contained is intended to restrain any court from enforcing the performance of trusts for charitable purposes, at the relation of the prosecuting attorney of the proper county, or from enforcing trusts, or restraining abuses, in other corporations, at the suit of a person injured. [36 v. 68, § 24, S. & C. 1270.]

Disposition of fines.

SEC. 33. All fines collected under the provisions of this chapter shall be paid into the treasury of the proper county for the use of the common schools within the county. [36 v. 68, § 25, S. & C. 1270.]

Actions under this chapter to have precedence, etc.

SEC. 34. Actions under this chapter in any court shall have precedence of any civil business pending therein; and the court, on the motion of the attorney general or prosecuting attorney, shall require as speedy a trial of the merits of the case as may be consistent with the rights of the parties. [57 v. 50, § 1, S. & C. 1272.]

CHAPTER 4.

REPEALS.

SECTION 1. The following acts and parts of acts are hereby repealed:

S. & C. 940, 51 v. 57. 1. Title XVI., and Chapter IV. of Title XVIII., of the act of March 11, 1853, entitled "an act to establish a code of civil procedure."

S. & C. 1264, 36 v. 68. 2. The act of March 17, 1838, entitled "an act relating to informations in the nature of quo warranto, and regulating the mode of proceeding thereon."

S. & C. 1270, 37 v. 70. 3. The act of March 18, 1839, entitled "an act to amend the act entitled 'an act relating to informations in the nature of quo warranto, and regulating the mode of proceeding thereon,' passed March 17, 1838."

S. & C. 1271, 43 v. 94. 4. The act of March 12, 1845, entitled "an act to amend the act entitled 'an act relating to informations in the nature of quo warranto, and regulating the mode of proceeding thereon,' passed March 17, 1838, and to repeal certain laws therein specified, and for other purposes."

S. & C. 1272, 57 v. 50. 5. The act of March 20, 1860, entitled "an act further to regulate the practice of the supreme court and district courts in this state."

S. & S. 563, 59 v. 43. 6. The act of April 1, 1862, entitled "an act to amend section 524 of an act entitled 'an act to establish a code of civil procedure,' passed March 11, 1853."

S. & S. 604, 63 v. 15. 7. The act of February 16, 1866, entitled "an act to provide additional security to creditors of counties, townships, and municipal corporations."

67 v. 114. 8. Sections six, seven, and eight, of the act of April 18, 1870, entitled "an act to amend sections 28, 181, 313, 314, as amended February 16, 1866; 374, as amended March 29, 1859; 517, 526, 532, and 557, of the code of civil procedure."

70 v. 176. 9. The act of April 28, 1873, entitled "an act supplementary to an act entitled 'an act regulating incorporations in the nature of proceeding in quo warranto, and regulating the manner of proceeding therein,' passed March 17, 1838."

10. The act of April 20, 1874, entitled "an act to amend section five hundred and twenty-two (522) of an act entitled 'an act to establish a code of civil procedure,' passed March 11, 1853." 71 v. 106.

11. The act of March 30, 1875, entitled "an act to amend section five hundred and fifteen of the code of civil procedure." 72 v. 172.

SEC. 2. This act shall take effect and be in force from and after the first day of September, 1878; but process then issued shall be executed, jurors then selected may be drawn and impaneled, actions, suits, and proceedings then pending shall be conducted to final judgment, and liens of judgments and decrees then existing shall continue and be preserved, in all respects, as if this act had not been passed; and the office of an officer appointed by a court, under the authority of any law by this act repealed, shall not be vacated by such repeal, but such officer shall hold his office as if this act had not been passed.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 14, 1878.

TABLE

OF THE

SECTIONS OF THE CIVIL CODE OF 1853,

AS AMENDED,

WITH THE PAGES OF THE ANNUAL VOLUME OF STATUTES OF 1878 ON WHICH THEIR SUBSTANCE WILL BE FOUND.

The following table will show the places in the statutes where the sections of the Civil Code of 1853, and the amendments thereto, will be found—the left-hand column indicating the sections of the Civil Code, and the right-hand the pages of the statutes of 1878:

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[House Bill No. 433.]

AN ACT

To revise and consolidate the laws relating to procedure in the probate court.

Be it enacted by the General Assembly of the State of Ohio:

PART THIRD.

REMEDIAL.

TITLE II. PROCEDURE IN PROBATE COURT.

CHAPTER 1. WILLS.
CHAPTER 2. EXECUTORS AND ADMINISTRATORS.
CHAPTER 3. GUARDIANS AND TRUSTEES.
CHAPTER 4. INSOLVENT DEBTORS.
CHAPTER 5. MARRIAGES.
CHAPTER 6. STATISTICS OF BIRTHS AND DEATHS.
CHAPTER 7. GENERAL PROVISIONS.
CHAPTER 8. CRIMINAL.
CHAPTER 9. REPEALS.

CHAPTER 1.

WILLS.

SECTION
1. Definitions of terms in this title.
2. Who may make a will.
3. A bequest or devise to charitable purposes, if any issue of testator living, void, unless made one year before his death.
4. How will made.
5. May be deposited with probate judge.
6. Must be inclosed and indorsed when so deposited, etc.
7. To whom it may be delivered.
8. When to be opened.
9. Who may enforce production of will.
10. Into what counties such process may issue.
11. Liability of officer serving same.
12. Responsibility of person refusing to produce will.
13. Effect of witness being devisee or legatee.
14. Examination of witnesses to will.
15. How will proved if witnesses unknown or incompetent, or their testimony cannot be had.
16. When court may issue a commission to take their testimony.
17. Admission of will to probate.
18. Filing and record.
19. Certified copy of will, etc., evidence.
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21. Uncontested probate, after two years, binding, unless, etc.
22. Appeal from refusal to admit will to probate.
23. How appeal perfected.
24. Duty of judge on notice of contest; what papers to be sent to common pleas, and what returned to probate court.
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30. Will not admitted to probate or record void.
31. Effect of devisee withholding will from probate for three years.

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32. Wills lost or destroyed may be admitted to probate.
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34. Testimony, what and how taken.
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79. Verbal will, how made and proved.
80. Must be admitted to probate within six months.
81. Expenses and fees of probate, etc., by whom paid.

Definitions of terms in this title.

SECTION 1. In this title the term "will" shall be construed to include codicils as well as wills; every word importing the masculine gender may extend and be applied to females as well as males; every word importing the singular number only may extend to and be applied to several persons or things as well as one; and every word importing the plural number only may extend to and be applied to one person or thing as well as several. [50 v. 297, §§ 77, 78; S. & C. 1615.]

Who may make a will.

SEC. 2. Any person of full age and of sound mind and memory, and not under any restraint, having any property, personal or real, or any interest therein, may give and bequeath the same to any person by last will and testament lawfully executed. [72 v. 3, § 1.]

Any bequest or devise to charitable purposes, if any issue of testator living, void, unless made one year before his death.

SEC. 3. If any testator die leaving issue of his body, or an adopted child, living, or the legal representatives of either, and the will of such testator give, devise, or bequeath the estate of such testator, or any part thereof, to any benevolent, religious, educational, or charitable purpose, or to this state or any other state or country, or to any county, city, village, or other corporation or association in this or any other state or country, or to any person in trust for any of such purposes, or municipalities, corporations, or associations, whether such trust appears on the face of the instrument making such gift, devise, or bequest or not; such will as to such gift, devise, or bequest, shall be invalid unless such will shall have been executed according to law, at least one year prior to the decease of such testator. [72 v. 3, § 1.]

How will made.

SEC. 4. Every last will and testament (except nuncupative wills hereinafter provided for) shall be in writing, and signed at the end thereof by the party making the same, or by some other person in his presence and by his express direction, and shall be attested and subscribed in the pres-

ence of such party, by two or more competent witnesses, who saw the testator subscribe, or heard him acknowledge the same. [50 v. 297, § 2; S. & C. 1615]

Its deposit with probate judge, etc.

SEC. 5. Any will in writing may be deposited, by the person making the same, or by some person for him, in the office of the judge of the probate court in the county in which such testator lives, to be safely kept until delivered or disposed of as hereinafter provided; and said probate judge, on being paid the fee of one dollar therefor, shall receive and keep such will, and give a certificate of deposit therefor; and no will not so deposited shall be admitted to probate without notice to the widow or husband and next of kin of the testator, resident in the state, in such manner and for such time as the probate court shall direct or approve. [50 v. 297, § 3; S. & C. 1615.]

How such will inclosed, etc.

SEC. 6. Every will intended to be deposited as aforesaid, shall be inclosed in a sealed wrapper, which shall have indorsed thereon the name of the testator, and the said probate judge shall indorse thereon the day when, and the person by whom it was delivered; and the wrapper may also have indorsed the name of any person to whom it is to be delivered after the death of the testator; and it shall not be opened or read until delivered to a person entitled to receive the same, or otherwise disposed of as hereinafter provided. [50 v. 297, § 4; S. & C. 1615.]

To whom it may be delivered.

SEC. 7. Such will shall, during the lifetime of the testator, be delivered only to himself, or to some person authorized by him, by an order in writing, duly proved by the oath of a subscribing witness; and after his death, it shall be delivered to the person named in the indorsement on the wrapper of the will. if there be any person so named, who shall demand it. [50 v. 297, § 5; S. & C. 1615]

When to be opened.

SEC. 8. If no person shall demand the will in pursuance of such appointment, it shall be publicly opened in the probate court, within two months after notice of the death of the testator, and shall be retained in the office of the probate judge, until offered for probate; or if the jurisdiction belongs to any other court, it shall be delivered to the executor or other person entitled to the custody of it, to be presented for probate in such other court; and if the jurisdiction of such will belongs to the probate judge opening the same, he shall immediately give notice to the executor or executors, if any are named in such will, and if none are named therein, then to other persons immediately interested, of the existence of such will. [50 v. 297, § 6; S. & C. 1615.]

Who may enforce the production of a will, and how, etc.

SEC. 9. If any real or personal estate shall be devised, or bequeathed, by any last will, the executor of such will, or any person interested therein, may cause the same to be brought before the probate court of the county in which such estate may be, and the court may, by citation, attachment, or warrant, or if circumstances require it, by warrant or attachment in the first instance, compel the person having the

custody or control of such will, to produce it before the court for the purpose of being proved. [50 v. 297, § 7; S. & C. 1615.]

Into what counties such process may issue.

SEC. 10. The process mentioned in the preceding section, may be issued into any county in the state, and shall be served and returned by the sheriff, or other officer to whom it may be delivered. [50 v. 297, § 8; S. & C. 1615.]

Liability of officer serving same.

SEC. 11. The officer to whom such process may be delivered shall be liable for neglect in the service or return of such process, in like manner as sheriffs are, or may be by law, liable for neglect in not serving or returning a capias issued upon an indictment. [50 v. 297, § 9; S. & C. 1615.]

Responsibility of person refusing to produce will.

SEC. 12. If the person having the custody or control of a will, shall without any reasonable cause, neglect or refuse to produce the same for probate, after being duly cited for that purpose, he may be committed to the jail of the county, there to be kept in close custody until he shall produce the will, and he shall be further liable to the action of any party aggrieved, for the damages which may be sustained by such neglect or refusal. [50 v. 297, § 10; S. & C. 1615.]

Effect of a witness being a devisee or legatee.

SEC. 13. If a devise or bequest is given to a person who is a witness to the will, and the will cannot otherwise be proved than by the testimony of such witness, the devise or bequest shall be void, and the witness shall be competent to give testimony of the execution of the will, in like manner as if such devise or bequest had not been made; and if such witness would have been entitled to any share of the testator's estate, in case the will was not established, so much of such share as shall not exceed the bequest or devise to him, shall be saved to him; and the devisees and legatees shall contribute for that purpose in the mode hereinafter directed for absent or after born child. [50 v. 297, § 11; S. & C. 1615.]

Examination of witnesses to will.

SEC. 14. The said court shall cause the witnesses to such will, and such other witnesses as any person interested in having the same admitted to probate, may desire, to come before such court; and said witnesses shall be examined in open court, and their testimony reduced to writing, and filed. [50 v. 297, § 12; S. & C. 1615.]

How will proved if witnesses unknown or incompetent, or their testimony cannot be had.

SEC. 15. If it shall appear to the court, when the will is offered for probate, that any witness thereto is gone to parts unknown; or if the witnesses to a will were competent at the time of attesting its execution, and afterward became incompetent, or the testimony of any witness cannot for any reason be obtained within a reasonable time, the will may be admitted to probate, and allowed upon such proof as would be satisfactory, and in like manner as if such absent or incompetent witnesses were dead. [50 v. 297, § 13; S. & C. 1615.]

SEC. 16. The court may issue a commission, with the will annexed, directed to any suitable person or persons to take the deposition of any witness to a will who resides out of

When court may issue a commission to take their testimony.

the jurisdiction of the court, or who resides within it and is infirm and unable to attend court; and every deposition so taken, certified, and returned by any one or more of the persons named in such commission, shall be as valid as if taken in open court. [50 v. 297, § 14; S. & C. 1615.]

Admission of will to probate.

SEC. 17. If it shall appear that such will was duly attested and executed, and that the testator, at the time of executing the same, was of full age and of sound mind and memory, and not under any restraint, the court shall admit the will to probate. [50 v. 297, § 15; S. & C. 1615.]

Filing and recording.

SEC. 18. Every will, when admitted to probate, shall be filed in the office of the probate judge, and recorded, together with the testimony, by said judge or his clerk, in a book which shall be kept by him for that purpose. [50 v. 297, § 16; S. & C. 1615.]

Certified copy of a will, etc.; evidence.

SEC. 19. A copy of such recorded will, with a copy of the order of probate annexed thereto, certified by the said judge of probate under seal of his court, shall be as effectual in all cases as the original would be, if produced and established by proof. [50 v. 297, § 17; S. & C. 1615.]

Recorded in each county where real estate is situate.

SEC. 20. If real estate devised by will is situate in any other county than that in which the will is proved, an authenticated copy of the will and order of probate shall be admitted to record in the office of the probate judge of each county in which such real estate may be situate, upon the order of such probate judge, and shall have the same validity therein as if probate had been had in such county. [50 v. 297, § 18; S. & C. 1615.]

Uncontested probate after two years binding, unless, etc.

SEC. 21. If no person interested shall, within two years after probate had, appear and contest the validity of the will, the probate shall be forever binding, saving, however, to infants, married women, and persons absent from the state, or of insane mind, or in captivity, the like period, after the respective disabilities are removed. [50 v. 297, § 19; S. & C. 1615.]

Appeal from refusal to admit will to probate.

SEC. 22. In case of the refusal to admit a will to probate, any person aggrieved thereby may appeal from such decision to the next term of the court of common pleas, by filing notice of his intention to appeal within ten days. [51 v. 167, § 22; S. & C. 1212.]

How appeal perfected, and proceedings in common pleas.

SEC. 23 The person appealing shall procure and file in the court of common pleas a certified copy of the order of said probate court, rejecting the will, together with the will, and thereupon said appeal shall be deemed perfected; and the court of common pleas, on the hearing, shall take testimony touching the execution of such will, and have the same reduced to writing; and the final order of the court of common pleas shall, together with the will and testimony so taken, be certified by the clerk to the probate court; and if by such order the will is admitted to probate, the will, order, and testimony shall be recorded in the probate court. [51 v. 167, § 23; S. & C. 1212.]

Duty of judge on notice of contest.

SEC. 24. Whenever the probate court shall receive from the clerk of the court of common pleas a certificate that a petition has been filed in the court of common pleas to contest the validity of any will admitted to record or recorded in the probate court, the probate court shall forthwith transmit to the court of common pleas, the will, testimony, and all papers relating thereto, with a copy of the order of probate, attaching the same together and certifying the same under the seal of the court; and a copy of the final judgment, on such contest, shall be certified by the clerk of the court of common pleas to the probate court; and the said clerk shall also transmit to the probate court the will and other papers transmitted as aforesaid to the common pleas; and the same shall be deposited and remain in the probate court. [51 v. 167, §§ 24, 25; S. & C. 1212.]

What papers to be sent to common pleas, and what returned to probate court.

Will executed in other states admitted to record here, and its effect.

SEC. 25. Authenticated copies of wills, executed and proved according to the laws of any state or territory of the United States, relative to any property in the state of Ohio, may be admitted to record in the probate court of any county in this state, where any part of such property may be situated; and such authenticated copies, so recorded, shall have the same validity in law, as wills made in this state, in conformity with the laws thereof, are declared to have: provided, that where any such will, or authenticated copy has been or shall hereafter be admitted to record, in the probate court of any county in this state, where any part of such property may be situated, a copy of such recorded will, with the copy of the order to record the same, annexed thereto, certified by the probate judge, under the seal of his court, may be filed and recorded in the office of the probate judge of any other county in this state, where any part of such property is situated, and it shall be as effectual, in all cases, as the authenticated copy of said will would be, if proved and admitted to record by the court. [50 v. 297, § 26; S. & C. 1615.]

Probate, etc., of will made out of the United States.

SEC. 26. A will executed, proved, and allowed, in any country other than the United States and territories thereof, according to the laws of such foreign state or country, may be allowed and admitted to record in this state, in the manner and for the purpose mentioned in the following sections. [50 v. 297, § 27; S. & C. 1615.]

Proceedings to admit will to record which has been probated without the state.

SEC. 27. A copy of the will and probate thereof, duly authenticated, shall be produced by the executor, or by any person interested therein, to the probate judge of the county in which there is any estate upon which the will may operate, whereupon said probate judge shall continue the motion to admit such will to probate, for the term of two months, and notice of the filing of such application shall be given to all persons interested, in some public newspaper, printed or in general circulation in the county, where such motion is made, at least three weeks successively; the first publica-

tion to be at least forty days before the time set for the final hearing of said motion. [50 v. 297, § 28; S. & C. 1615.]

Admission and effect or admission to record.

SEC. 28. If, on hearing, it shall appear to the court that the instrument ought to be allowed in this state, the court shall order the copy to be filed and recorded; and the will, and the probate and record thereof, shall then have the same force and effect as if the will had been originally proved and allowed, in the same court, in the usual manner: provided, however, that nothing herein contained shall be construed to give any operation or effect to the will of an alien, different from what it would have had if originally proved and allowed in this state. [50 v. 297, § 29; S. & C. 1615.]

Powers of executor or administrator under will made out of this state.

SEC. 29. After allowing and admitting to record a will, pursuant to any of the four preceding sections, the court may grant letters testamentary thereon, or letters of administration with the will annexed, and shall proceed in the settlement of the estate, that may be found in this state; and the executor taking out letters, or the administrator with the will annexed, shall have the same power to sell and convey the real or personal estate by virtue of the will or the law, as other executors, or administrators with the will annexed, shall or may have by law. [50 v. 297, § 30; S. & C. 1615.]

Will not admitted to probate or record void.

SEC. 30. No will shall be effectual to pass real or personal estate, unless it shall have been duly admitted to probate or record, as provided in this title. [50 v. 297, § 31; S. & C. 1615.]

Effect of devisee withholding will from probate for three years.

SEC. 31. No lands, tenements, or hereditaments, shall pass to any devisee in a will, who shall know of the existence thereof, and have the same in his power to control, for the term of three years, unless, within that time, he shall cause the same to be offered for, or admitted to, probate; and by such neglect, the estate devised to such devisee shall descend to the heirs of the testator. [50 v. 297, § 32; S. & C. 1615.]

SPOLIATED WILLS.

Wills when lost or destroyed may be admitted to probate.

SEC. 32. The probate court shall have full power and authority to admit to probate, any last will and testament which such court may be satisfied was duly executed according to the provisions of the law upon the subject in force at the time of the execution of such last will and testament, and not revoked at the death of the testator, when such original will has been lost, spoliated, or destroyed, subsequent to the death of such testator, or after the testator has become incapable of making a will by reason of insanity, and it cannot be produced in court in as full, ample, and complete a manner as such court now admits to probate last wills and testaments, the originals of which are actually produced in court for probate. [64 v. 20, § 47; S. & S. 928.]

SEC. 33. In all cases where application shall be hereafter made to the probate court to admit to probate a will duly

Notice of application therefor.

executed as aforesaid, and which has been lost, spoliated, or destroyed, as aforesaid, it shall be the duty of the party seeking to prove the same, to give a written notice to all persons whose interest it may be to resist the probate, and who reside in the county where the testator resided at the time of his death, or to their agent or attorney, five days before the day on which such proof is to be made, or to give notice, by publication in a newspaper printed in the county, thirty days before the day set for hearing such proof. [50 v. 297, § 48; S. & C. 1615.]

Testimony—what, and how taken.

SEC. 34. In all such cases, the said court shall cause the witnesses to such will so executed and lost, spoliated or destroyed, and not revoked, and such other witnesses as any person interested in having such will admitted to probate may desire to come before such court, and said witnesses shall be examined by said probate judge, and their testimony reduced to writing and filed by him in his court: provided, that in all cases where it may be necessary so to do, in consequence of witnesses residing out of the jurisdiction of said court, or who reside within such jurisdiction and who are infirm or unable to attend court, the court may order the testimony of such witnesses to be taken and reduced to writing by some competent person, which testimony shall be filed in such probate court. [50 v. 297, § 49; S. & C. 1615.]

On what proofs will established.

SEC. 35. If the court, upon such proof, shall be satisfied that such last will and testament was duly executed in the mode provided by the law in force at the time of its execution, that the contents thereof are substantially proved, and that the same was unrevoked at the death of the testator, and has been lost, spoliated, or destroyed subsequent to the death of such testator, or his becoming incapable, as aforesaid, such court shall find and establish the contents of such will as near as the same can be ascertained, and cause the same and the testimony taken in the case to be recorded in said court. [50 v. 297, § 50; S. & C. 1615.]

Effect of will so established.

SEC. 36. The contents of any such last will and testament so found, established, and admitted to probate, as aforesaid, shall be as effectual to pass real and personal estate, and for all other purposes, as if the original will had been admitted to probate and record, according to the provisions of this title; and such wills shall, in all respects, be governed by the laws in force relating to other wills, not only as relates to the contest of the same, but in all other matters. [50 v. 297, § 51; S. & C. 1615.]

NEW RECORD OR PROBATE WHEN RECORD OF WILL DESTROYED.

SEC. 37. When the record of any will has been or shall hereafter be destroyed, a copy of such will and the probate

thereof may be recorded by the probate court of the proper county, whenever it shall be made to appear to the satisfaction of the court that said record has been destroyed, and whenever it shall further appear, by a certificate, under the hand and seal of the probate judge, or clerk of the court of common pleas of the proper county, that such copy is a true copy of the original will and the probate thereof. [65 v. 90, § 1; S. & S. 930.]

When record of will destroyed authenticated copy of the will and probate thereof may be admitted to record:

SEC. 38. When the record of any will has been, or shall hereafter be, destroyed, as aforesaid, the original will may be again admitted to probate and record in the same manner provided for the probate of wills. [65 v. 90, § 2; S. & S. 930.]

Or original will may again be admitted to probate:

SEC. 39. The probate court of any county, where the record of any will has been or shall hereafter be destroyed, may admit to record a copy of said will, whenever it shall appear that such copy produced for record bears the certificate of any probate judge or clerk of the court of common pleas setting forth that the same is a true copy of the will, the record of which has been destroyed: provided, that nothing in this or the next two preceding sections shall be so construed as to affect the proceedings or extend the time for contesting the validity of any will, or for asserting any rights thereunder, and the record provided for in the preceding sections shall show that the original record was destroyed, and the time as near as may be, when the will was originally admitted to probate and record. [65 v. 90, § 3; S. & S. 930.]

Or an authenticated copy of the will alone may be admitted to record.

Notice that copy has been admitted to record to be published; contest of same and effect if not set aside.

SEC. 40. It is hereby made the duty of every probate judge, who shall admit to record any will or copy thereof, under the provisions of either the three preceding sections, immediately thereafter to give notice for three consecutive weeks, in two weekly newspapers of his county, if so many be published therein, or if not, in one newspaper published and of general circulation therein, stating the name of the person, the record of whose will has been destroyed, and the day when said record was supplied; and all persons interested in said record shall have the right at any time within five years from the making of said new record, to come into the probate court of the proper county, and contest the question whether the record thus supplied is the same as the record destroyed; and from all final orders and decrees of the probate court in such contest, either party may appeal to the court of common pleas, in such manner as appeals are now or hereafter may be provided for from the probate court; and if any person interested in said record shall, at the time such record is supplied, be under any legal disability, such person shall have the right to contest said record within two years from the removal of such disability; and such new record supplied, according to either of the three preceding sections, shall, unless set aside in proceedings provided for in this section, have the same force, effect, and validity, as the original record. [65 v. 90, § 4; S. & S. 930.]

REVOCATION.

How will expressly revoked or canceled.

SEC. 41. A will shall be revoked by the testator tearing, canceling, obliterating, or destroying the same—with the intention of revoking it—by the testator himself, or by some person in his presence, or by his direction; or by some other will or codicil, in writing, executed as prescribed by this title; or by some other writing, signed, attested, and subscribed, in the manner provided by this title for the making of a will, but nothing herein contained shall prevent the revocation implied by law, from subsequent changes in the condition or circumstances of the testator. [50 v. 297, § 39; S. & C. 1615.]

What shall not be deemed a revocation.

SEC. 42. A bond, agreement, or covenant, made for a valuable consideration by a testator, to convey any property devised or bequeathed in any will previously made, shall not be deemed a revocation of such previous devise or bequest, either at law or in equity; but such property shall pass by such devise or bequest, subject to the same remedies on such bond, agreement, or covenant, for a specific performance or otherwise, against the devisees or legatees, as might be had by law against the heirs of the testator, or his next of kin, if the same had descended to them. [50 v. 297, § 33; S. & C. 1615.]

Sale of property devised or bequeathed:

Nor incumbering same.

SEC. 43. A charge or incumbrance upon any real or personal estate, for the purpose of securing the payment of money, or the performance of any covenant, shall not be deemed a revocation of any will relating to the same estate, previously executed; but the devises and legacies therein contained shall pass and take effect, subject to such charge or incumbrance. [50 v. 297, § 34; S. & C. 1615.]

No change of estate.

SEC. 44. A conveyance, settlement, deed, or other act of the testator, by which his estate or interest in property previously devised or bequeathed by him, shall be altered, but not wholly divested, shall not be deemed a revocation of the devise or bequest of such property, but such devise or bequest shall pass to the devisee or legatee, the actual estate or interest of the testator, which would otherwise descend to his heirs, or pass to his next of kin; unless, in the instrument by which such alteration is made, the intention is declared, that it shall operate as a revocation of such previous devise or bequest. [50 v. 297, § 35; S. & C. 1615.]

Unless inconsistent with the will:

SEC. 45. But if the provisions of the instrument by which such alteration is made, are wholly inconsistent with the terms and nature of such previous devise or bequest, such instrument shall operate as a revocation thereof, unless such provisions depend on a condition or contingency, and such condition be not performed, or such contingency do not happen. [50 v. 297, § 36; S. & C. 1615.]

Nor by marriage of testatrix.

SEC. 46. A will executed by an unmarried woman, shall not be deemed revoked by her subsequent marriage. [50 v. 297, § 37; S. & C. 1615.]

When revoked by birth of child.

SEC. 47. If the testator had no children at the time of executing his will, but shall afterward have a child living, or born alive after his death, such will shall be deemed revoked, unless provisions shall have been made for such child by some settlement, or unless such child shall have been provided for in the will, or in such way mentioned therein as to show an intention not to make such provision, and no other evidence to rebut the presumption or revocation shall be received. [50 v. 297, § 38; S. & C. 1615.]

Effect of destruction of a subsequent will, etc., on first.

SEC. 48. If, after the making of a will, the testator shall duly make and execute a second will, the destruction, canceling, or revocation of such second will, shall not revive the first will, unless it appear by the terms of such revocation, that it was his intention to revive and give effect to his first will; or unless, after such destruction, canceling, or revocation, he shall duly republish his first will. [50 v. 297, § 40; S. & C. 1615.]

Child reported dead, or born after will made, to have portion of estate.

SEC. 49. When a testator, at the time of executing his will, shall have a child absent and reported to be dead, or having a child at the time of executing the will, shall afterward have a child who is not provided for in the will, the absent child, or the child born after the execution of the will, shall take the same share of the estate, both real and personal, that he would have been entitled to if the testator had died intestate; toward raising which portion the devisees and legatees shall equally contribute, in proportion to the value of what they shall respectively receive under the will, unless, in consequence of a specific devise or bequest, or of some other provisions in the will, a different apportionment among the devisees and legatees shall be found necessary, in order to give effect to the intention of the testator, as to that part of the estate which shall pass by the will: provided, that if such child, supposed to be dead at the time of the execution of the will, shall have a child or children, provision for whom is made by the testator, the other legatees and devisees shall not be required to contribute, but such child, supposed to have been dead, shall take the provision made for his child or children, by the testator, or such part thereof as the circumstances of the case, in the opinion of the court of proper jurisdiction, may think just and equitable. [50 v. 297, § 41; S. & C. 1615.]

Advancement to be taken into account in such adjustment.

SEC. 50. In settling the extent of the claim of any child, as provided for in the preceding section, any portion of the estate of the testator received by a party interested, by way of advancement, shall be deemed a portion of the estate, and charged to the party who has received the same. [50 v. 297, § 42; S. & C. 1615.]

ELECTION BY WIDOW.

SEC. 51. If any provision be made for a widow, in the will of her husband, it shall be the duty of the probate judge,

Citation to widow to make her election.

forthwith after the probate of such will, to issue a citation to said widow, to appear and make her election, whether she will take such provision, or be endowed of the lands of her said husband and take her distributive share of his personal estate; and said election shall be made within one year from the date of the service of the citation aforesaid; but she shall not be entitled to both, unless it plainly appears by the will to have been the intention that she should have such provision in addition to her dower and distributive share. [55 v. 36, § 43; S. & C. 1623.]

Election or non-election, and its effect.

SEC. 52. The election of the widow to take under the will, shall be made by her in person, in the probate court of the proper county, except as hereinafter provided; and on the application by her to take under the will, it shall be the duty of the court to explain to her the provisions of the will, her rights under it, and by law in the event of her refusal to take under the will. The election of the widow to take under the will shall be entered upon the minutes of the court; and if the widow shall fail to make such election, she shall retain her dower, and such share of the personal estate of her husband as she would be entitled to by law in case her husband had died intestate, leaving children. If she elect to take under the will, she shall be barred of her dower and such share, and take under the will alone, unless as provided in the next preceding section: provided, further, that said election by the widow to take under the will, shall not bar her of the right to remain in the mansion of her husband, and receive one year's allowance for the support of herself and children, as provided by law, unless the will shall expressly otherwise direct. [57 v. 30, § 44; S. & C. 1623.]

If widow unable to appear or non-resident of county, how election taken.

SEC. 53. If the widow of the testator shall be unable to appear in court by reason of ill-health, or is not a resident of the county in which said election is required to be made, it shall be the duty of the probate court, on an application made in her behalf, to issue a commission, with a copy of the will annexed, directed to any suitable person, to take the election of said widow, to accept the provisions of said will in lieu of the provisions made for her by law; and it shall be the duty of the court in said commission to direct such person to explain to said widow her rights under the will, and by law. [50 v. 297, § 45; S. & C. 1615.]

How election made for insane or imbecile widow.

SEC. 54. If the widow of any testator shall be unable to make an election by reason of insanity or imbecility of mind, it shall be the duty of the probate court, so soon as the facts shall come to the knowledge of the court, at any time within one year after the death of the testator, to appoint some suitable person to ascertain the value of the provision made by the testator for her in his will, in lieu of the provisions made by law, and the value of her rights by law in the estate of her husband; and if the court shall be satisfied, on the coming in of the report of the person appointed to make such investigation, that the provision made by the

testator for his widow, as aforesaid, in his will, is more valuable and better for her than the provision by law, said court shall enter upon its minute book, an election for said insane or imbecile widow, that she, by virtue of the proceeding herein provided for by the court, elects to take under the will of her husband, which election, when so made, shall have the same force and effect as an election made by one not under such disability. [50 v. 297, § 46; S. & C. 1615.]

CONSTRUCTION AND OPERATION.

Rights of purchaser without knowledge of a foreign will.

SEC. 55. The title of any bona fide purchaser, without knowledge of a will, to any land situated in this state, derived from the heir or heirs of any person not a resident of this state at the time of his or her death, shall not be defeated by the production of the will of such decedent, unless such will shall be offered for record in this state within four years from the final probate and establishment of such will in the state or territory in which it may have been admitted to probate: provided, that the rights of infants, married women, or persons of insane mind and memory, shall not be concluded by any delay or failure to record such will in this state, until two years after their repective disabilities are removed: provided, further, that no proceeding shall be had in this state to contest a will executed and proved according to the law of any state or territory of the United States, or of any foreign country, relative to property in this state; but if the said will shall be set aside in the state, territory, or country in which it is executed and proved, the same shall be held of no validity in this state as to all persons claiming under said will, with notice of the same being set aside, as aforesaid; and as to all other persons, from the time that an authenticated copy of the final order or decree setting the same aside, is filed in the office of the probate judge of the county in which said will is recorded. [50 v. 297, § 52; S. & C. 1615.]

Devise for life, limited to heirs, how construed.

SEC. 56. When lands, tenements, or hereditaments are given by will, to any person for his life, and after his death to his heirs in fee, or by words to that effect, the conveyance shall be construed to vest an estate for life only, in such first taker, and a remainder in fee simple in his heirs. [50 v. 297, § 53; S. & C. 1615.]

Property acquired subsequent to making of will, passes.

SEC. 57. Any estate, right, or interest, in lands or personal estate or other property acquired by the testator after the making of his will, shall pass thereby, in like manner as if held or possessed at the time of making the will, if such shall clearly and manifestly appear by the will to have been the intention of the testator. [50 v. 297, § 54; S. & C. 1615.]

When whole estate of devisor in land to pass by the devise.

SEC. 58. Every devise of lands, tenements, or hereditaments, in any will hereafter made, shall be construed to convey all the estate of the devisor therein, which he could lawfully devise, unless it shall clearly appear by the will

that the devisor intended to convey a less estate. [50 v. 297, § 55; S. & C. 1615.]

Devise or bequest not to lapse by the death of devisee or legatee.

SEC. 59. When a devise of real or personal estate is made to any child or other relative of the testator, if such child or other relative shall have been dead at the time of the making of the will, or shall die thereafter, leaving issue surviving the testator, in either case such issue shall take the estate devised in the same manner as the devisee would have done, if he had survived the testator; or if such devisee shall leave no such issue, and the devise be of a residuary estate to him or her, and other child or relative of the testator, the estate devised shall pass to, and vest in such residuary devisee surviving the testator, unless a different disposition shall be made or required by the will [63 v. 47, § 56; S. & S. 934.]

When real estate undevised shall be applied to pay debts instead of personalty.

SEC. 60. When any part of the real estate of a testator shall descend to his heirs by reason of its not being devised or disposed of by his will, and his personal estate shall be insufficient for the payment of his debts, the undevised real estate shall be first chargeable with the debts, in exoneration, as far as it will go, of the real estate that is devised, unless it shall appear from the will, that a different arrangement of his assets, for the payment of his debts, was made by the testator; in which case they shall be applied for that purpose in conformity with the provisions of the will. [50 v. 297, § 57; S. & C. 1615.]

Contribution when devised or bequeathed property taken to pay debts:

SEC. 61. When any estate, real or personal, that is devised shall be taken from the devisee for the payment of the debts of the testator, all the other devisees and legatees shall contribute their respective proportions of the loss to the person from whom the estate is taken, so as to make the loss fall equally on all the devisees and legatees, according to the value of the property received by each of them, excepting as provided in the following section. [50 v. 297, § 58; S. & C. 1615.]

Except when will otherwise provides.

SEC. 62. If, in such case, the testator shall, by making a specific devise or bequest, have virtually exempted any devisee or legatee from his liability to contribute, with the others, for the payment of the debts, or if he shall, by any other provision in the will, have prescribed or required any appropriation of his estate, for the payment of his debts, different from that prescribed in the preceding section, the estate shall be appropriated and applied in conformity with the provisions of the will. [50 v. 297, § 59; S. & C. 1615.]

But whole estate liable for debts.

SEC. 63. Nothing contained in the two preceding sections shall impair, or in any way affect, the liability of the whole estate of the testator, for the payment of his debts; but the provisions of these sections shall apply only to the marshaling of the assets as between those who hold or claim under the will. [50 v. 297, § 60; S. & C. 1615.]

SEC. 64. When any part of the estate of the testator descends to a child born after the execution of the will, or

to a child absent and reported to be dead, or to a witness to a will who is a devisee or legatee, such estate (and the advancement made to such child or witness) shall, for all the purposes mentioned in the three preceding sections, be considered as it it had been devised to such child or witness; and he shall accordingly be bound to contribute with the devisees and legatees, as before provided, and shall be entitled to claim contribution from them accordingly. [50 v. 297, § 61; S. & C. 1615.]

Portion of child born after execution of will or supposed to be dead, or of witness subject to contribution.

SEC. 65. When any of the persons who are liable to contribute toward the discharge of such debt, according to the provisions contained in the four preceding sections, shall be insolvent or unable to pay his just proportion thereof, the others shall be severally liable to each other, for the loss occasioned by such insolvency, each one in proportion to the value of the property received by him, from the estate of the deceased; and if any one of the persons so liable shall die, without having paid his proportion of such debt, his executors and administrators shall be liable therefor, in like manner as if it had been his proper debt, to the extent to which he should have been liable if living. [50 v. 297, § 62; S. & C. 1615.]

If any liable to contribute are insolvent, how others to make up deficiency, etc.

SEC. 66. All cases arising under this chapter, in which devisees or legatees may be required to contribute to make up the share of any child born after the execution of the will, or of a child absent and reported to be dead, or of a witness to the will, or in which contribution is to be made among devisees, legatees, and heirs, or any of them, may be heard and determined in a single action. [50 v. 297, § 63; S. & C. 1615.]

How contribution enforced:

SEC. 67. Nothing in the foregoing sections contained, shall prevent the court, when a sale of lands aliened or unaliened, by a devisee or heir is ordered for the payment of the debts of the estate, to make such order and decree for the sale of any portion of the aliened or unaliened land, as may be equitable between the several parties, and also to make such order of contribution, and such further order and decree as will fully settle and adjust the various rights and liabilities of the parties, which arise by reason of the alienation or the order of sale, or otherwise. [50 v. 297, § 64; S. & C. 1615.]

Or adjusted, etc., upon order of sale to pay debts.

SEC. 68. When a last will and testament is admitted to probate, or a will made out of this state is admitted to record as hereinbefore provided, and any lands, tenements, or hereditaments are given or devised by such will to the executors therein named, or any of them, to be sold or conveyed, or such estate shall be thereby ordered to be sold by such executors, or any of them, and one or more of the executors so named die, refuse to act, or neglect to take upon themselves the execution of the will, then all sales and conveyances of said estate by the executor or executors who took upon himself or themselves in this state the execution of the will, or the survivor or survivors of them, shall be equally valid as

Estate directed or devised to be sold by executors, etc., who may sell.

if the residue of the executors had joined in the sale and conveyance; but if none of the executors named in such will take upon themselves the execution thereof, or if all the executors who take out letters testamentary, die, resign, or be removed before the sale and conveyance of such estate, or die, resign, or be removed after the sale and before the conveyance is made, the sale or conveyance or both shall be made by the administrator with the will annexed. [66 v. 4, § 65.]

TESTAMENTARY TRUSTEES.

Trustees appointed by will must give bond, unless, etc.

SEC. 69. Every trustee appointed in any will shall, before entering upon the discharge of his duty as such trustee, execute a bond, with freehold sureties, payable to the state, in the probate court of the county in which any such will may be admitted to probate, to the satisfaction of said court, conditioned for the faithful discharge of his duties as such trustee: provided, that when by the terms of any will, the testator shall express a wish that his trustee may execute the trust without giving bond, the court admitting the will to probate, may, at [its] their discretion, grant permission to the trustee to execute the trust with or without bond, as may seem expedient; and when granted without bond, the court may, at any subsequent period, upon the application of any party interested, require bond to be given; and provided, further, that the court upon the application of any party interested, may, if deemed necessary, require a new or additional bond at any time before the completion of the trust. [62 v. 61, § 1; S. & S. 922.]

To apply to trusts heretofore created by will.

SEC. 70. In all trusts heretofore created by will and not fully discharged, the probate court, on the petition of any person interested, and after notice to the trustee, shall, where not otherwise directed in the will, and deemed unnecessary by the court, require a bond as provided in the next preceding section. [62 v. 61, § 2; S. & S. 922.]

Removed on failure to give bond.

SEC. 71. If any trustee aforesaid shall not give bond within such time as shall be ordered by the court, he shall be removed from his trust, or be considered to have declined it, as the case may be; and some other person may be appointed in his stead, upon giving the required bond. [62 v. 61, § 3; S. & S. 922.]

Separate bond from each trustee or joint bond.

SEC. 72. When two or more persons shall be appointed trustees by any will, the probate court may take a separate bond from each, with sureties, or a joint bond from all, with sureties. [62 v. 61, § 4; S. & S. 922.]

Surviving trustee may execute trust.

SEC. 73. When two or more trustees are appointed by will, to execute a trust, and one or more of them die, decline, resign, or are removed, the survivors or remaining trustees or trustee may execute the trust, unless the terms of the will express a contrary intention. [50 v. 297, § 66; S. & C. 1615.]

When probate judge may appoint a person to execute a trust.

SEC. 74. If any testamentary trustee shall die, decline to accept, resign, become incapacitated, or be removed, and such will has not provided for the contingency of the death, incapacity or refusal of such trustee or trustees to accept or execute the trust, the probate court having probate of said will may appoint some suitable person or persons to execute the trust according to the will, who shall give bond with security, as provided herein. [50 v. 297, § 67; S. & C. 1615.]

How trusts created by foreign will may be executed.

SEC. 75. Trusts created by a will made out of this state, and relating to lands situated in this state, may, after the will is duly admitted to record in this state, be executed as hereinafter provided. [50 v. 297, § 68; S. & C. 1615.]

Trustee named in foreign will to give bond, etc.

SEC. 76. If a trustee is named in such foreign will, he may execute the trust, upon giving bond to the state of Ohio, in such sum and with such sureties as shall be approved by the probate court of the county in which said lands, or any part thereof, are situate, conditioned to discharge with fidelity the trust reposed in him: provided, that when the testator in the will naming the trustee, shall have ordered or requested that bond should not be given by said trustee, the bond shall not be required, unless from a change in the situation or circumstances of the trustee, or for other sufficient cause, the court of probate shall think proper to require it. [50 v. 297, § 69; S. & C. 1615.]

How trustee appointed by a foreign court may execute a trust.

SEC. 77. If a trustee has been appointed by a foreign court according to the laws of the foreign jurisdiction, he may execute the trust upon giving bond as provided in the preceding section, and satisfying the probate court of the county in which such lands, or any part of them, are situate, by an authenticated record of his appointment, that he has been duly appointed trustee to execute the trust. [50 v. 297, § 70; S. & C. 1615.]

The probate court may appoint a trustee under a foreign will.

SEC. 78. The probate court of the county where the property affected by the trust is situated, may, when necessary, on application by petition of the party or parties interested, appoint a trustee to carry into effect a trust created by a foreign will; which trustee, before entering upon his trust, shall give bond, with such security, and in such amount, as such court shall direct. [50 v. 297, § 71; S. & C. 1615.]

NUNCUPATIVE WILLS.

Verbal will, how made and proved.

SEC. 79. A verbal will, made in the last sickness, shall be valid in respect to personal estate, if reduced to writing, and subscribed by two competent disinterested witnesses, within ten days after the speaking of the testamentary words; and if it be proved, by said witnesses, that the testator was of sound mind and memory, and not under any restraint, and called upon some person present, at the time the testamentary words were spoken, to bear testimony to said disposition as his will. [50 v. 297, § 74; S. & C. 1615.]

Must be admitted to probate within six months.

SEC. 80. No nuncupative will shall be admitted to record, unless the same shall be offered for probate within six months after the death of the testator. [50 v. 297, § 75; S. & C. 1615.]

Expenses and fees of probate, etc., by whom paid.

SEC. 81. The expense of proving and recording wills, shall be paid by the party at whose instance the same is done; and the witnesses and officers shall have the like fees for attendance and services as in other cases; and upon the executor or administrator being appointed the expense shall be reimbursed out of the estate. [50 v. 297, § 76; S & C. 1615.]

CHAPTER 2.

EXECUTORS AND ADMINISTRATORS.

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When letters testamentary to issue.

SEC. 2. When any will shall be duly proved and allowed, the probate court shall issue letters testamentary thereon, to the executor, if any be named therein, if he is legally competent, and if he shall accept the trust, and shall give bond, if bond required to discharge the same; otherwise, the court shall grant letters of administration on the estate, as hereinafter provided. [38 v. 146, § 2; S. & C. 566.]

Bond of executor, and its condition.

SEC. 3. Every executor, before entering upon the execution of his trust, shall give bond, with two or more sufficient sureties, in such sum as the court shall order, payable to the state, with condition, as follows:

First—To make and return to the court, on oath, within three months, a true inventory of all the moneys, goods,

chattels, rights, and credits of the testator which are by law to be administered, and which shall have come to his possession or knowledge; and, also, if required by the court, an inventory of the real estate of the deceased.

Second—To administer according to law, and to the will of the testator, all his goods, chattels, rights, and credits, and the proceeds of all his real estate, that may be sold for the payment of his debts or legacies, which shall at any time come to the possession of the executor, or to the possession of any other person for him; and,

Third—To render, upon oath, a just and true account of his administration, within eighteen months, and at any other times when required by the court or the law; and failing so to do for thirty days after he shall have been notified of the expiration of the time by the probate judge, he shall receive no allowance for services, unless the court shall enter upon its journal that such delay was necessary and reasonable.

When bond not required.

And when there are two or more persons appointed executors, none shall intermeddle or act as such but those who actually give bond as before prescribed: provided, however, that when, by the terms of any last will, the testator shall express a wish that his executor may execute the same without giving bond, the court admitting the will to probate may, at its discretion, grant letters testamentary, with or without bond, as may seem expedient; and, when granted without bond, may, at any subsequent period, upon the application of any party interested, require bond to be given, and in default of his giving the same, he may be removed. [59 v. 98, § 3; S. & S. 350: 45 v. 25, § 2; S. & C. 614]

Different bond may be given when the executor is residuary legatee.

SEC. 4. If the executor is residuary legatee, he may, instead of the bond prescribed in the preceding section, give bond in a sum, and with two or more sureties, to the satisfaction of the court, with condition to pay all the debts and legacies of the testator; in which case he shall not be required to return an inventory. [38 v. 146, § 4; S. & C. 566.]

Such bond not to discharge lien of creditors on real estate, unless, etc.

SEC. 5. The giving of such bond as is prescribed in the preceding section, shall not discharge the lien on the real estate of the testator, for the payment of his debts, except only on such part thereof as shall have been lawfully sold by the executor, to one who purchased in good faith, and for a valuable consideration. [38 v. 146, § 5; S. & C. 566.]

Separate or joint bond may be taken; who may be sureties, and to be approved.

SEC. 6. When two or more persons are appointed executors, administrators, or testamentary trustees, the court may take a separate bond, with sureties, from each of them, or a joint bond, with sureties, from all of them together; and in all bonds with sureties, given by executors, administrators, or trustees, all the sureties shall be inhabitants of this state, and such as the court shall approve; and the bonds shall be filed in the court taking the same. [38 v. 146, § 6; S. & C. 566]

If executor renounces, etc., administration to be granted.

SEC. 7. If any person, who is appointed an executor, shall refuse to accept the trust, or if, after being duly cited for that purpose, he shall neglect to appear and accept the same, or if he shall neglect, for twenty days after probate of the will, to give bond as before prescribed, the court shall grant letters testamentary to the other executors, if there be any capable and willing to accept the trust; and if there is no such other executor, the court shall commit administration of the estate, with the will annexed, to the widow of the deceased, or to his next of kin, or to such other person as would have been entitled thereto, if the deceased had died intestate. [38 v. 146, § 7; S. & C. 566.]

Administration during the minority of an executor.

SEC. 8. When a person appointed executor is under the age of twenty-one years, at the time of proving the will, administration may be granted with the will annexed, during his minority, unless there be another executor who will accept the trust, in which case the estate shall be administered by such other executor, until the minor shall arrive at full age, when he may be admitted as executor with the former, upon giving bond as before provided. [38 v. 146, § 8; S. & C. 566.]

Bond of an administrator with the will annexed.

SEC. 9. Every person who is appointed administrator with the will annexed, shall, before entering on the execution of his trust, give bond in like manner, and with like condition as is required of an executor. [38 v. 146, § 9; S. & C. 566.]

Executor of an executor not to administer the estate of the first testator.

SEC. 10. The executor of an executor shall have no authority, as such, to administer the estate of the first testator; but on the death of the sole or surviving executor of any last will, administration of the estate of the first testator, not already administered, may be granted, with the will annexed, to such person as the court shall think fit to appoint. [38 v. 146, § 10; S. & C. 566.]

Powers of an executor before letters testamentary are granted.

SEC. 11. No executor named in a will, shall, before letters testamentary are granted, have any power to dispose of any part of the estate of the testator, except to pay funeral charges, nor to interfere, in any manner, with such estate, further than is necessary for its preservation. [38 v. 146, § 11; S. & C. 566.]

To whom letters of administration shall be granted.

SEC. 12. Administration of the estate of an intestate shall be granted to some one or more of the persons hereinafter mentioned; and they shall be, respectively, entitled thereto in the following order, to wit:

First—His widow, or next of kin, or both, as the court may think fit; and if they do not voluntarily either take or renounce the administration, they shall, if resident within the county, be cited by the court, or notified by a party in interest, for that purpose.

Second—If the persons so entitled to administration are incompetent, or evidently unsuitable for the discharge of the trust, or if they neglect, without any sufficient cause, to take administration of his estate, the court shall commit it

to one or more of the principal creditors, if there be any competent and willing to undertake the trust.

Affidavit that there is no will.

Third—If there be no such creditor, and the court is satisfied that the estate exceeds the value of one hundred dollars, the court shall commit administration to such other person as it shall think fit: provided, however, that letters of administration shall not be issued as on the estate of an intestate until the person to be appointed has made and filed an affidavit that there is not, to his knowledge, any last will and testament of the alleged intestate. [38 v. 146, § 12; S. & C. 566.]

Bond of administrator, and its condition.

SEC. 13. Every administrator shall, before entering on the execution of his trust, give bond, with two or more sufficient sureties, in such sum as the court shall order, payable to the State, with condition, as follows:

First—To make and return into court, on oath, within three months, a true inventory of all moneys, goods, chattels, rights, and credits of the deceased, which have or shall come to his possession or knowledge; and, also, if required by the court, an inventory of the real estate of the deceased.

Second—To administer according to law, all the moneys, goods, chattels, rights, and credits of the deceased, and the proceeds of all his real estate that may be sold for the payment of his debts, which shall at any time come to the possession of the administrator, or to the possession of any other person for him.

Third—To render, upon oath, a true account of his administration, within eighteen months, and at any other times when required by the court or the law, and failing so to do for thirty days after he shall have been notified of the expiration of the time by the probate judge, he shall receive no allowance for services, unless the court shall enter upon its journal that such delay was necessary and reasonable.

Fourth—To pay any balance remaining in his hands upon the settlement of his accounts, to such persons as the court or the law shall direct; and,

Fifth—To deliver the letters of administration into court, in case any will of the deceased shall be thereafter duly proved and allowed. [59 v. 98, § 13; S. & S. 350.]

Special administration, in what cases granted.

SEC. 14. When, by reason of a suit concerning the proof of a will, or from any other cause, there shall be a delay in granting letters testamentary or of administration, the court may, in its discretion, appoint a special administrator to collect and preserve the effects of the deceased. [38 v. 146, § 14; S. & C. 566.]

Bond of special administrator.

SEC. 15. Every such special administrator, before entering upon the duties of his trust, shall give bond, with two or more sufficient sureties, in such sum as the court shall order, payable to the State of Ohio, with condition that he will make and return into court, within three months, a true inventory of all the moneys, goods, chattels, rights, and credits of the deceased, which have or shall come to his pos-

session or knowledge, and that he will truly account, on oath, for all the moneys, goods, chattels, debts, and effects of the deceased, that shall be received by him as such special administrator, whenever required by the court, and will deliver the same to the person who shall be appointed executor or administrator of the deceased, or to such other person as shall be lawfully authorized to receive the same. [38 v. 146, § 15; S. & C. 566.]

His power and duty.

SEC. 16. Such special administrator shall collect all the goods, chattels, and debts of the deceased, and preserve the same for the executor or administrator who may thereafter be appointed; and for that purpose, may commence and maintain suits as an administrator, and may also sell such perishable and other goods as the court may order to be sold; and he shall be allowed such compensation for his services as the court shall think reasonable, if he delivers over forthwith to the executor or administrator who may supersede him, the property and effects of the estate, as hereinafter provided. [38 v. 146, § 16; S. & C. 566.]

Compensation.

To cease on appointment of executor or administrator.

SEC. 17. Upon the granting of letters testamentary or of administration, the power of the special administrator shall cease, and he shall forthwith deliver to the executor or administrator all the goods, chattels, moneys, and effects of the deceased in his hands; and the executor or administrator may be admitted to prosecute any suit commenced by the special administrator, in like manner as an administrator de bonis non is authorized to prosecute a suit commenced by a former executor or administrator. [38 v. 146, § 17; S. & C. 566.]

How special administrator may be proceeded against by the executor or administrator.

SEC. 18. If such special administrator shall neglect or refuse to deliver over the property and estate to the executor or administrator, as provided in the preceding section, the court may, by citation and attachment, compel him to do so: and the executor or administrator may also proceed, by civil action, to recover the value of the assets from him and his sureties. [38 v. 146, § 18; S. & C. 566.]

Special administrator not liable to creditors; limitation of actions against executor, etc.

SEC. 19. Such special administrator shall not be liable to an action by any creditor of the deceased; and the time of limitation for all suits against the estate shall begin to run from the time of granting letters testamentary or of administration in the usual form, in like manner as if such special administration had not been granted. [38 v. 146, § 19; S. & C. 566.]

Administration and proceeding when decedent was not a resident of the state, etc.

SEC. 20. In all cases where any person has heretofore died or shall hereafter die, whether testate or intestate, such person not being at the time of his decease a resident of this state, but having been engaged in the prosecution of business therein, as a partner or otherwise, and leaving in this state any property belonging in whole or in part to his estate, the probate court of the county in which such business may have been prosecuted as aforesaid, or of any county in which such property may be situated, or where any debtor of such

decedent may reside, shall, upon the application of any creditor of such decedent, whose claim is founded on a contract made or a right of action which accrued within this state, grant to such creditor or to some other person, administration of all and singular the assets of such decedent situate within this state; and the proceeds of such assets shall be applied to the payment of the debts which shall be proved against such estate before such administrator; and the surplus, if any, shall be paid into the court granting such administration for the benefit of the estate of such decedent, in the state where the decedent resided at the time of his death. [49 v. 106, §§ 1, 2; S. & C. 616.]

Limitation for granting original administration except for good cause shown on petition.

SEC. 21. Administration shall not be originally granted as of right, after the expiration of twenty years from the death of the testator or intestate: provided, nevertheless, that each probate judge shall have power, within his county, to grant letters of original administration upon the estate of any person heretofore deceased, or who may hereafter die, as well after as before the expiration of the said period of twenty years, upon petition of the next of kin or other person or persons interested, or their agent, and on good cause shown for granting such letters as aforesaid; and the said judge may, before allowing the prayer of any such petition, direct notice thereof to be given, by publication, for a period not exceeding thirty days, in one or more of the newspapers printed in the county where such petition is filed. [50 v. 127, § 1; S. & C. 617.]

Resignation of an executor or administrator.

SEC. 22. The court issuing letters testamentary or appointing an administrator, may, if it thinks fit, and upon good cause shown, receive the resignation of such executor or administrator, and appoint an administrator in his place. [38 v 146, § 21; S. & C. 566.]

Effect of such resignation.

SEC. 23. The acceptance of such resignation, and the appointment of another administrator, shall not affect the liability of such former executor or administrator, or his sureties, previously incurred. [38 v. 146, § 22; S. & C. 566.]

Removal of executor or administrator, and cause therefor.

SEC. 24. If an executor or administrator, residing out of this state, shall, after being duly notified by any person in interest, as creditor or otherwise, or after being cited by the court, for that purpose, neglect to render his accounts and settle the estate according to law; or if any executor or administrator shall become insane, or otherwise incapable of discharging his trust, or evidently unfit therefor, or it shall be made to appear to the court that he has unreasonably neglected to file an inventory of the estate, or has willfully omitted from the inventory any assets of the estate, or that there are unsettled claims or demands existing between him and the estate which in the opinion of the court may be the subject of controversy or litigation between him and the estate, or persons interested therein; the court may remove such executor or administrator, and the other executor or administrator, if any there be, may proceed in discharging

the trust as if the executor or administrator so removed were dead; and if there be no other executor or administrator, to discharge the trust, the court may commit administration of the estate, not already administered, to some other person or persons, in like manner as if the executor or administrator so removed were dead. [38 v. 146, § 23; S. & C. 566: 72 v. 174, §§ 3, 4.]

Administration de bonis non, when to be granted.

SEC. 25. When any sole executor or administrator shall die without having fully administered the estate, the court shall grant letters of administration, with the will annexed, or otherwise, as the case may require, to some suitable person, to administer the goods and estate of the deceased, not already administered: provided, there be personal estate of the deceased not administered, to the amount of twenty dollars, or debts to a like amount remaining due from the estate. [38 v. 146, § 24; S. & C. 566.]

If after administration granted as of an intestate a will be proved, the same shall be revoked unless, etc.

SEC. 26. If, after granting letters of administration, as of an intestate estate, a will of the person deceased shall be duly proved and allowed, the first administration shall be revoked by the court, unless a petition contesting the probate of such will shall, before such revocation, be filed in the court of common pleas, in which case, in the discretion of the probate court, the administration may be continued in the hands of the original administrator, until the final determination of such proceedings to contest, when, if the will is sustained, the first administration shall be revoked; and in either case, upon the revocation of the first administration and the appointment of an executor or administrator with the will annexed, the executor or administrator with the will annexed, shall be admitted to prosecute or defend any suit, proceeding, or matter commenced by or against the original administrator, in like manner as an administrator de bonis non is authorized to prosecute or defend a suit commenced by a former executor or administrator. [73 v. 109, § 25.]

Proceedings by the administrator or executor against the former executor or administrator.

SEC. 27. An administrator or executor appointed in the place of an executor or administrator who has resigned, been removed, or whose letters have been revoked, or authority extinguished, shall be entitled to the possession of all the personal effects and assets of the estate unadministered, and may maintain a suit against the former executor or administrator and his sureties on administration bond, for the same and for all damages arising from the maladministration or omissions of the former executor or administrator. [38 v. 146, § 26; S. & C. 566.]

Sales, etc., of the former executor or administrator valid.

SEC. 28. When any letters of administration shall be revoked, or when any executor or administrator shall be removed or resign, or the authority as such of a woman extinguished, all previous sales, whether of real or personal property, made lawfully by the executor or administrator, and with good faith on the part of the purchaser, and all other

lawful acts done by such executor or administrator, shall remain valid and effectual. [38 v. 146, § 27; S. & C. 566.]

Marriage of an executrix or administratrix extinguishes her authority.

SEC. 29. When an unmarried woman, who is executrix or administratrix, either alone or jointly with another person, shall marry, her husband shall not be executor or administrator in her right, but the marriage shall operate as an extinguishment of her authority as executrix or administratrix; and the other executor or administrator, if there is any, may proceed in discharging the trust, as if she were dead; and if there is no other executor or administrator, administration may be granted of the estate not already administered; and such administrator may proceed to discharge the trust, in like manner as if the executrix or administratrix were dead. [38 v. 146, § 28; S. & C. 566.]

THE INVENTORY: THE ALLOWANCE TO THE WIDOW AND CHILDREN: AND THE DEBTS DUE TO THE ESTATE.

Inventory to be returned within three months, except, etc.

SEC. 30. Every executor or administrator shall, within three months after his appointment, make and return upon oath, into court, a true inventory of all the goods, chattels, moneys, rights, and credits of the deceased, which are by law to be administered, and which shall have come to his possession or knowledge; except only that an executor who is a residuary legatee, may give bond to pay all the debts and legacies of the deceased, as hereinbefore provided; and he shall, thereupon, be excused from returning such an inventory. [38 v. 146, § 29; S. & C. 566.]

Exceptions to inventory and proceedings thereon.

SEC. 31. At any time within one year after the return of any inventory, any person interested in the estate may file exceptions to the inventory; and, thereupon, the court shall set a day for the hearing thereof, and cause written notice of such filing and of the time so fixed for the hearing, to be given to the executor or administrator, not less than five days before the time so fixed for the hearing; and for good cause the hearing may be continued for such time as the court shall deem reasonable; and at the hearing the executor or administrator and any witnesses subpœnaed by either party may be examined under oath; and the court shall enter its finding on the journal and tax the costs as may be equitable. [72 v. 174, §§ 1, 2, 5, 6.]

When real estate to be included in the inventory.

SEC. 32. If the court, at the time of granting letters testamentary or letters of administration, shall think fit, it may order the executor or administrator to also include in the inventory an appraisement of all the real estate of the deceased. [38 v. 146, § 30; S. & C. 566.]

When emblements shall be assets.

SEC. 33. The emblements or annual crops raised by labor, and whether severed or not from the land of the deceased, at the time of his death, shall be assets in the hands of the executor or administrator, and shall be included in the inventory. [38 v. 146, § 31; S. & C. 566.]

Power to gather, etc., the crops.

SEC. 34. The executor or administrator, or the person to whom he may sell such emblements may, at all reasonable times, enter upon the lands to cultivate, sever, and gather the same. [38 v. 146, § 32; S. & C. 566.]

Appraisers, how appointed.

SEC. 35. The estate and effects comprised in the inventory, shall, unless an appraisement thereof has been dispensed with by an order of court, be appraised by three suitable disinterested persons, who shall be appointed by the court, and sworn to a faithful discharge of their trust; and if any part of such estate or effects be in any other county, any disinterested justice of such county may appoint the appraisers of the estate and effects therein. [38 v. 146, § 33; S. & C. 566.]

If appraisers fail to act, justice may appoint others.

SEC. 36. If, by neglect, sickness, or other cause, any of the appraisers shall fail to attend to the performance of their duty, any justice of the peace in the county in which the property to be appraised is situate, may appoint others to supply the place of such delinquent appraisers. [38 v. 146, § 34; S. & C. 566.]

Form of appointment of appraisers by justice.

SEC. 37. When a justice appoints appraisers he shall make a certificate of the appointment which shall be returned by the executor or administrator with the inventory, and which shall be in substance as follows:

To ———, of ——— county:

You are hereby appointed to appraise, on oath, the estate and effects of ———, late of ——— county, deceased. Given under my hand this ——— day of ———.

———— ————,
Justice of the peace.

[38 v. 146, § 35; S. & C. 566.]

Inventory to be made and by whom.

SEC. 38. After giving the notice in the next section required, the executor or administrator shall, with the aid of the appraisers, if an appraisement is made, make the inventory herein directed. [38 v. 146, § 36; S. & C. 566.]

How and when notice to be given.

SEC. 39. A notice of the time and place of making such inventory and appraisement, shall be served by the executor or administrator not less than five days previous thereto, on the widow, legatees, and next of kin, residing in the county where such property shall be, and it shall also be posted in two of the most public places in the township in which the deceased last dwelt; and in every such notice the time and place at which such appraisement will be made shall be specified. [38 v. 146, § 37; S. & C. 566.]

Appraisers' oath, and by whom to be administered.

SEC. 40. Before proceeding to the execution of their duty, the appraisers shall take and subscribe an oath, to be inserted in or annexed to the inventory, before an officer authorized to administer oaths, that they will truly, honestly, and impartially appraise the estate and property which shall be exhibited to them, and perform the other duties required by law in the premises, according to the best of their knowledge and ability. [38 v. 146, § 38; S. & C. 566.]

In whose presence and in what manner the articles shall be appraised.

SEC. 41. The appraisers shall, in the presence of such of the next of kin, legatees, or creditors of the testator or intestate, as shall attend, and the widow, if there be one, proceed to estimate and appraise the property and estate; and each article or item shall be set down separately, with the value thereof, in dollars and cents, distinctly in figures, opposite to the articles or items, respectively. [38 v. 146, § 39; S. & C. 566.]

How bonds and other securities to be inventoried and appraised.

SEC. 42. The inventory shall contain a particular statement of all bonds, mortgages, notes, and all other securities for the payment of money, belonging to the deceased, which are known to such executor or administrator, specifying the name of the debtor in each security, the date, the sum originally payable, the indorsements thereon, if any, with their dates, and the sum which, in the judgment of the appraisers, can be collected on each claim. [38 v. 146, § 40; S. & C. 566.]

How other debts shall be inventoried and appraised.

SEC. 43. The inventory shall also contain a statement of all other debts and accounts belonging to the deceased, which are known to such executor or administrator, specifying the name of the debtor, the date, the balance or thing due, and the value or sum which can be collected thereon, in the judgment of the appraisers. [38 v. 146, § 41; S. & C. 566.]

How inventory of money and bank bills to be stated.

SEC. 44. The inventory shall also contain an account of all moneys, whether in specie or bank bills, or other circulating medium, belonging to the deceased, which shall have come to the hands of the executor or administrator; and if none shall have come to his hands, the fact shall be so stated in said inventory. [38 v. 146, § 42; S. & C. 566.]

What property shall not be deemed assets to be administered on in certain cases.

SEC. 45. When any person shall die, leaving a widow, or minor child, or children, under the age of fifteen years, the following property shall not be deemed assets or administered as such, but shall be included and stated in the inventory of the estate, and signed by the appraisers, without appraising the same:

First—One family sewing machine, to be retained by said widow absolutely as her own property, and all spinning wheels, weaving looms, and stoves set up and kept in use by the family.

Second—The family bible, family pictures, and school books used by or in the family of the deceased, and books, not exceeding one hundred dollars in value, which were kept and used as part of the family library before the decease of such person.

Third—One cow, or if there be no cow, household goods, to be selected by the widow, or if there be no widow, by the guardian or next friend of such minor child or children, not exceeding forty dollars in value, or if there be no household goods such as the widow or guardian or next friend may desire to select, then forty dollars in money; all sheep to the number of twelve, their valuation not to be greater than seventy-five dollars, and the wool shorn from them, and the yarn and cloth manufactured by the family; all flax in pos-

session of the family intended for the use thereof, and yarn or thread cloth manufactured therefrom.

Fourth—All the wearing apparel and ornaments of the family and of the deceased, all the beds, bedsteads, and bedding, cooking utensils, and table-ware necessary for the use of the family, one clock, one side-saddle, and any other articles of personal property not to exceed one hundred dollars in value, which the widow, or if there be no widow, the guardian or next friend of such minor child or minor children, may select, to be valued by the appraisers. [65 v. 180, § 43; S. & S. 353.]

Disposition thereof.

SEC. 46. The said articles, except the wearing apparel of the deceased, shall remain in the possession of the widow, if there be one, during the time she shall live with and provide for such minor child or children. When she shall cease to do so, she shall be allowed to retain as her own her wearing apparel, her ornaments, and one bed, bedstead, and the bedding for the same, and the other articles so exempted, and not consumed, shall then belong to such minor child or children. If there be a widow, and no minor child or children, then the said articles shall belong to such widow. [38 v. 146, § 44; S. & C. 566.]

Allowance to the widow and children for their support.

SEC. 47. The appraisers shall also set off and allow to the widow, and children under the age of fifteen years, if any there be, or if there be no widow, then to such children, sufficient provisions or other property to support them for twelve months from the death of the decedent; and if the widow or such children have, since the death of the deceased, and previous to such allowance, consumed for their support any portion of the estate, the appraisers shall take the same into consideration in determining the amount of the allowance. [38 v. 146, § 45; S & C. 566.]

Money to be set off if necessary.

SEC. 48. When there is not sufficient personal property, or property of a suitable kind, to set off to the widow or children, as provided in the preceding section, the appraisers shall certify what sum or further sum, in money, is necessary for the support of such widow or children. [38 v. 146, § 46; S. & C. 566.]

Allowance to the widow and children to be stated in separate schedule, etc.

SEC. 49. The appraisers shall not include in the inventory the provisions, property, or money set off and allowed by them to the widow or children, but the same shall be stated in a separate schedule, signed by them, and returned, with the inventory, to the court, by the executor, or administrator. [38 v. 146, § 47; S. & C. 566.]

Such allowance may be increased or diminished by the court.

SEC. 50. The probate court may, on petition of the widow, or other person interested, review the allowance made to the widow or children, mentioned in the preceding section, and increase or diminish the same, and make such order in the premises as [it] they shall deem right and proper. [38 v. 146, § 48; S. & C. 566.]

Inventory to be signed by appraisers, etc.

SEC. 51. Upon the completion of the inventory, it shall be signed by the appraisers, and a copy thereof shall be retained by the executor or administrator, and he shall return the original to the probate court. [38 v. 146, § 49; S. & C. 566.]

Appraisers' fees.

SEC. 52. The appraisers shall each receive one dollar per day for their services. [38 v. 146, § 50; S. & C. 566.]

Inventory to be sworn to by the executor or administrator; form of the oath, etc.

SEC. 53. Upon returning said inventory, the executor or administrator shall take and subscribe an oath before the probate judge, or his deputy clerk, or if they be absent from the county, or incapable, from sickness or otherwise, of transacting business, then before a justice of the peace of the county, stating that such inventory is in all respects just and true, that it contains a true statement of all the estate and property of the deceased, which has come to the knowledge of such executor or administrator, and particularly of all money, bank bills, or other circulating medium, belonging to the deceased, and of all just claims of the deceased against such executor or administrator, or other persons, according to the best of his knowledge. Such oath shall be indorsed upon, or annexed to the inventory. [38 v. 146, § 51; S. & C. 566.]

How return of the inventory may be enforced.

SEC. 54. If any executor or administrator shall neglect or refuse to return such inventory, within three months of the time of his taking out letters testamentary, or letters of administration, the probate court, at the instance of any person interested, shall issue an order requiring such executor or administrator, at a short day, therein to be appointed, to return an inventory according to law, or to show cause, before the court, why an attachment should not be issued against him. [38 v. 146, § 52; S. & C. 566.]

If order disobeyed, the executor or administrator may be imprisoned.

SEC. 55. If, after personal service of such order by an officer, or other person not an officer, such executor or administrator shall not, by the day appointed, return such inventory, under oath, or obtain further time from the court to return the same, the court shall issue an attachment against him, and may commit him to the jail of the county, there to remain, until he shall return such inventory, or be discharged by the court. [38 v. 146, § 53; S. & C. 566.]

Revocation of letters on account of neglect to return the inventory.

New letters.

SEC. 56. If such order can not be served personally, by reason of such executor or administrator absconding or concealing himself, or if, after being committed to prison such executor or administrator shall neglect, for thirty days, to make and return such inventory, the court may revoke said letters testamentary or letters of administration, and may grant administration to the person entitled thereto, other than such executor or administrator, in the same manner as original letters are granted. [38 v. 146, § 54; S. & C. 566.]

Effect of such revocation.

SEC. 57. Such letters shall supersede all former letters testamentary or of administration, and shall deprive the former executor or administrator of all power, authority, and control, over the estate of the deceased; and shall entitle

the person appointed, to take, demand, and receive the goods and effects of the deceased, wherever the same may be found. [38 v. 146, § 55; S. & C. 566.]

Prosecution of former bond by administrator de bonis non.

SEC. 58. In every such case of revocation, the bond, given by such former executor or administrator, shall be prosecuted, and a recovery had thereon, to the full extent of any injury sustained by the estate of the deceased, by the acts or omissions of such executor or administrator, and to the full value of all the property of the deceased, received and not duly administered by such executor or administrator. [38 v. 146, § 56; S. & C. 566.]

Executor or administrator imprisoned; how discharged.

SEC. 59. Every executor or administrator committed to prison, as aforesaid, may be discharged by the court, on his delivering, upon oath, all the property of the deceased, under his control, to such person as shall be authorized by the court or judge to receive the same. [38 v. 146, § 57; S. & C. 566.]

Proceedings when property of estate concealed or embezzled.

SEC. 60. Upon complaint made to the probate court of any county, by the executor, administrator, creditor, devisee, legatee, heir, or other person interested in the estate of any deceased person, against any person or persons suspected of having concealed, embezzled, or conveyed away any of the moneys, goods, chattels, things in action, or effects of such deceased, the court shall cite the person or persons suspected forthwith to appear before it, and to be examined, on oath, touching the matter of the said complaint. [51 v. 354, § 1; S. & C. 618.]

Imprisonment for disobeying citation.

SEC. 61. If any person so as aforesaid cited shall refuse or neglect to appear and submit to an examination, as aforesaid, or shall refuse to answer such interrogatories as may be lawfully propounded, the probate court shall commit such person to the jail of the county, there to remain in close custody until he or she shall submit to the order and direction of the court in that behalf. [51 v. 354, § 2; S. & C. 618.]

Examinations to be in writing.

SEC. 62. All such examinations, including as well questions as answers, shall be reduced to writing, signed by the party examined, and filed in the court before which the same was taken. [51 v. 354, § 3; S. & C. 618.]

Also of witnesses.

SEC. 63. The probate court shall, if required by either party, swear such other witness or witnesses as may be offered by either party touching the matter of such complaint, and shall cause the examination of every such witness, including as well questions as answers, to be reduced to writing, signed by the witness, and filed as aforesaid. [51 v. 354, § 4; S. & C. 618.]

Judgment of the court thereon.

SEC. 64. If, upon any such examination, the probate court shall be of opinion that the person or persons accused is, or are, guilty of either having concealed, embezzled, or conveyed away any moneys, goods, chattels, things in action, or effects of the deceased person aforesaid, the court shall forthwith render judgment in favor of the executor or ad-

ministrator of the estate, or, if there be no executor or administrator in this state, in favor of the state, against the person or persons so found guilty, for the amount of the moneys or the value of the goods, chattels, things in action, or effects so concealed, embezzled, or conveyed away, together with ten per centum penalty, and all the costs of such proceeding or complaint, which said judgment shall be a lien upon the real estate of the person or persons against whom it is rendered, within the county from the rendition thereof. [51 v. 354, § 5; S. & C. 618.]

Lien.

SEC. 65 The executor or administrator in favor of whom any such judgment shall have been rendered, may forthwith deliver to the clerk of the court of common pleas of the county, an authenticated transcript (which the probate judge is hereby directed to make out and deliver, on demand, to such executor or administrator), on which said transcript the clerk aforesaid shall immediately issue an execution of the said court of common pleas, for the amount of the original judgment and costs, and the costs which may have accrued or may accrue thereon; and thenceforth proceedings on execution shall be, in all respects, as if the said judgment had been rendered in the said court of common pleas. [51 v. 354, § 6; S. & C. 618.]

Transcript to be filed in common pleas, and execution issued.

SEC. 66. If such judgment as aforesaid be rendered in the name of the state, and there be no executor or administrator within this state, the prosecuting attorney of the county shall cause the said transcript to be filed in the clerk's office, and proceed thereon to execution as before provided; and he shall pay the moneys realized upon such execution to the treasurer of the county, for the use of the said estate, reserving such compensation to himself only as the probate court may allow. [51 v. 354, § 7; S. & C. 618]

If judgment in favor of the state, prosecuting attorney to attend to it.

SEC. 67. All gifts, grants or conveyances of land, tenements, hereditaments, rents, goods or chattels, and all bonds, judgments or executions, made or obtained with intent to avoid the purposes of these proceedings, or in contemplation of any such examination or complaint as aforesaid, shall be utterly void and of no effect. [51 v. 354, § 8; S. & C. 618]

Conveyances to evade these proceedings void.

SEC. 68. Whenever personal property, or assets of any kind, not mentioned in any inventory that shall have been made, shall come to the knowledge or possession of an executor or administrator, he shall cause the same to be appraised in manner aforesaid, and an inventory thereof to be returned, within two months after the discovery thereof; and the making of such inventory and return may be enforced in the same manner as in the case of the first inventory. [38 v. 146, § 58; S. & C. 566.]

New assets after return of first inventory.

SEC. 69. The executor or administrator shall, as far as he is able, collect the assets of the estate, within one year after the date of the administration bond. [38 v. 146, § 59; S. & C. 566.]

Assets to be collected.

When more than eighteen months allowed to collect assets.

SEC. 70. If, from the situation of the assets belonging to the estate, more than eighteen months from the date of the administration bond is required for their collection, the court may, upon motion, and being satisfied thereof by the affidavit of the executor or administrator, extend the time for that purpose. [38 v. 146, § 60; S. & C. 566.]

Affidavit in such case.

SEC. 71. The affidavit required by the preceding section shall set forth the grounds of the application, the amount of money in the hands of the executor or administrator, applicable to the payment of the debts of the deceased; and that the executor or administrator has used due diligence to collect the assets and to pay the debts. [38 v. 146, § 61; S. & C. 566.]

When such further time will not be allowed.

SEC. 72. Further time shall not be allowed to the executor or administrator, to collect the assets of an estate that is solvent, if he has in his hands, at the time of his application, more than one hundred dollars in money, subject to the claims of creditors of the estate. [38 v. 145, § 62; S. & C. 566.]

What further time will be allowed.

SEC. 73. The time allowed by the court, for the collection of the assets of the estate, shall not be granted, at any one time, for a period beyond one year from the time of the application; nor shall the time be extended beyond five years from the date of the administration bond. [38 v. 146, § 63; S. & C. 566.]

Powers of executor, etc., after expiration of five years.

SEC. 74. The office of the executor or administrator shall not cease with the time allowed by law, or the court, for the collection of the assets of the estate. [38 v. 146, § 64; S. & C. 566.]

Discharge of a debt in a will against an executor; how to be construed.

SEC. 75. The discharge or bequest, in a will, of any debt or demand of a testator, against any executor named in his will, or against any other person, shall not be valid as against the creditors of the deceased; but shall be construed only as a specific bequest of such debt or demand; and the amount thereof shall be included in the inventory of the credits and effects of the deceased, and shall, if necessary, be applied in the payment of his debts; and if not necessary for that purpose, shall be paid in the same manner and proportion as other specific legacies. [38 v. 146, § 65; S. & C. 566.]

Naming a person executor not to discharge debt.

SEC. 76. The naming of any person executor, in a will, shall not operate as a discharge or bequest of any just claim which the testator had against such executor; but such claim shall be included among the credits and effects of the deceased, in the inventory; and the executor shall be liable for the same, as for so much money in his hands at the time such debt or demand becomes due; and he shall apply and distribute the same, in the payment of debts and legacies, and among the next of kin, as part of the personal estate of the deceased. [38 v. 146, § 66; S. & C. 566.]

SEC. 77. When any mortgagee of real estate, or any as-

signee of such mortgagee, shall die without having foreclosed the right of redemption, the mortgaged premises, and the debt secured thereby, shall be considered as personal assets in the hands of his executor or administrator, and shall be administered and accounted for as such; and if the mortgagee or assignee shall not have obtained possession of the mortgaged premises in his life time, his executor or administrator may take possession thereof, by open and peaceable entry, or by action, in like manner, as the deceased might have done if living. [38 v. 146, § 67; S. & C. 566.]

Mortgaged premises to be considered personal assets, etc.

Possession.

SEC. 78. In case of the redemption of any such mortgage, the money paid thereon shall be received by the executor or administrator of the deceased, and he shall thereupon release and discharge the mortgage; and until such redemption, the executor or administrator, if possession shall have been taken, either by himself or by the deceased, shall be seized of the mortgaged premises, in trust for the same persons, whether creditors, next of kin, or others, who would be entitled to the money, if the promises had been redeemed. [38 v. 146, § 68; S. & C. 566]

Who may discharge mortgage; the estate before redemption.

SEC. 79. Any mortgage belonging to the estate may be foreclosed by the executor or administrator in the same manner that the decedent might have foreclosed the same. [38 v. 146, § 69; S. & C. 566]

How executor or administrator to foreclose mortgage.

SEC. 80. When any debtor of a deceased person shall be unable to pay all his debts, the executor or administrator, with the approbation of the probate court, may compound with such debtor, and give him a discharge, upon receiving a fair and just dividend of his estate and effects, or such part of said debt, as said court may deem beneficial to those interested in the estate of said deceased person. [38 v. 146, § 70; S. & C. 566.]

How administrator may compound with debtor.

SALE OF PERSONAL PROPERTY, AND THE SALE BILL.

SEC. 81. The executor or administrator shall, within three months after the date of his bond, sell the whole of the personal property belonging to the estate, which is liable to the payment of debts, and is assets in his hands, to be administered, except promissory notes, and all claims, demands, and rights in action which can be collected by him, and except bonds and stocks when the sale of them is not necessary for the payment of debts; and, also, except the following:

What personal property the executor or administrator may sell, and when.

First—Such as the widow may desire to take at the valuation made by the appraisers, she securing payment to the executor or administrator therefor, as other purchasers.

Second—Such property as is specifically bequeathed shall not be sold until the residue of the personal estate has been sold, and is found by the executor or administrator to be insufficient for the payment of the debts of the estate.

Third—The executor or administrator may defer the sale

of the emblements or annual crops raised by labor, which were not severed from the land of the deceased, at the time of his death, beyond the three months herein prescribed for the sale of the assets; and the same may be sold before or after they are severed from the land, at the discretion of the executor or administrator, and in the mode prescribed for the sale of other goods and chattels: provided, however, that when by the terms of any last will, the testator shall express a wish that there be no appraisement or sale of his personal property, the court admitting the will to probate may, at its discretion, direct the omission of either or both of said requirements; and may, also, at any subsequent period, upon the application of any party interested, require such appraisement and sale, or either of them, as the justice of the case may require. [38 v. 146, § 71; S. & C. 566: 45 v. 25, § 3; S. & C. 614.]

When appraisement and sale of personal property not required.

How property may be delivered to legatee.

SEC. 82. The property specifically bequeathed may be delivered over to the legatee entitled thereto, he securing the redelivery thereof, on demand, to the executor or administrator; otherwise the same shall remain in the hands of the executor or administrator, to be distributed or sold, as may be required by law, and the condition of the estate. [38 v. 146, § 72; S. & C. 566.]

Personal property to be sold at vendue; unless the court otherwise order.

SEC. 83. The sale of personal property shall be made at public vendue, after at least fifteen days' notice having been given in some newspaper in general circulation throughout the county, or by advertisement, set up in at least five public places in the county where such sale is to take place: provided, however, that the court may for good cause extend the time for sale; and provided, further, that whenever the court shall be satisfied, upon good and sufficient proof, that it would be for the advantage of the estate of the decedent to sell any part of said personal estate not taken by the widow at the valuation made by the appraisers, at private sale, the court may authorize the executor or administrator to sell the personal estate, or any part or parcel thereof, at private sale, either for cash or upon such other terms as said court may, in its discretion, direct; but such executor or administrator shall not be authorized to sell such property at private sale, at less than its appraised value, unless the probate court shall be satisfied by the affidavit of at least three disinterested persons that such property can not be sold at its appraised value, and that it will be for the best interest of the estate to sell the same at a less price, in which case such court may authorize such executor or administrator to sell the same for a less amount. Should any property thus ordered to be sold at private sale, be not sold within six months from the time of such order, or within such other time as may be fixed in the order, then said probate court may order the same to be sold at public auction in the same manner as though a private sale had not been ordered. [38 v. 146, § 73; S. & C. 566: 66 v. 30, § 1.]

Disposition of desperate claims.

SEC. 84. Upon proper proof being made by an executor or administrator to the probate court that any claim, debt, or demand whatsoever, belonging to the estate in his hands to be administered and accruing in the lifetime of the deceased, represented by such executor or administrator, is desperate: 1st, on account of the doubtful solvency or actual insolvency of the person or persons owing the same; 2d, on account of such debtor having availed him or herself of the bankrupt law of the United States; 3d, by reason of some legal or equitable defense which such debtor or debtors shall allege and make appear against the same; 4th, on account of the smallness of such claim and difficulty in its collection, either from the remoteness of the residence of the debtor, or the ignorance of the executor or administrator of such residence; the court may order such claim, debt, or demand to be compounded or sold, or to be filed in such court for the benefit of the heirs, devisees, or creditors of such deceased person as will sue for or recover the same, giving the creditors the preference, if they or any of them apply for the same before the final settlement of the estate, and such order of the court shall be a sufficient voucher to such executor or administrator. [47 v. 28, § 1; S. & C. 614.]

When notice of application to court for their sale necessary.

SEC. 85. In all cases where any of the claims or demands exceed the sum of ten dollars, or they all in the aggregate exceed the sum of five hundred dollars, the executor or administrator shall give notice of such intended application to said court for such order, at least three consecutive weeks previous to the day on which the application is to be made, which notice shall be published in some newspaper having general circulation in such county; but if there be no newspaper in the county, then in some newspaper having a general circulation in said county; but if the claims are numerous they need not be described in such notice. [47 v. 28, § 2; S. & C. 614.]

Public or private sale thereof.

SEC. 86. If the court shall order a sale of such debts or demands, the executor or administrator shall give public notice as aforesaid, of the time and place of sale, three consecutive weeks previous to the day of sale, at which they shall be sold to the highest bidder; but the court may, in its discretion, order a private sale of such debts and demands, in like manner and for like reasons as provided for the private sale of goods and chattels; and if the court authorize the compounding of such claims or any of them, the court shall in the order fix the sum for which the same may be compounded. [47 v. 28, § 3; S. & C. 614.]

Terms of compounding to be fixed in order.

How corporation stock sold.

SEC. 87. The executor or administrator may sell either at public or private sale, any railroad stock or other stock or shares in any corporation; but if he sell at private sale, it shall be for a sum not less than shall be for that purpose fixed by an order of the probate court. [60 v. 95, § 1; S. & S. 357.]

SEC. 88. In all sales of personal property, a credit shall

What credit to be given.

be given by the executor or administrator, of not less than three and not more than nine months, unless otherwise ordered by the court, when the amount purchased exceeds three dollars. [38 v. 146, § 74; S. & C. 566.]

Security to be taken.

SEC. 89. Notes or bonds, with two or more approved sureties, shall, in all cases of sale on credit, be taken by the executor or administrator. [38 v. 146, § 75; S. & C. 566.]

When executor or administrator not liable for losses.

SEC. 90. An executor or administrator shall not be responsible for any loss happening by the insolvency of the purchaser at such sale, or his sureties, if satisfactory evidence is adduced, that such executor or administrator proceeded with due caution, in taking security, and has used due diligence to collect said notes and bonds. [38 v. 146, § 76; S. & C. 566.]

Executor or administrator to make out list of articles liable to sale.

SEC. 91. The executor or administrator shall, previous to any pubiic sale, make out a list of all the articles mentioned in the inventory, which are liable to sale, in the order they are set down in the inventory, whether the same are destroyed, taken by the widow at the appraisement, or otherwise forthcoming or not; and some suitable clerk, who is not interested in the estate, shall, at the time of the sale, place opposite to each item upon said list, the names of the purchaser or purchasers, and the amount for which the item mentioned, or any part thereof, was sold; and if there be any articles on said list which shall not be sold, the clerk shall enter, opposite to such article, the words "not sold," or the words "taken by the widow at the appraisement," or other statement, according to the fact; and if any articles be sold, which are not mentioned in the inventory, the same shall be so designated on the sale bill by the clerk. [38 v. 146, § 77; S. & C. 566.]

Duty of clerk of such sale.

Construction of preceding section.

SEC. 92. Nothing contained in the preceding section shall be so construed as to require the executor or administrator to sell each article in the order in which the same is stated in the list taken from the inventory, nor to require articles, which are mentioned in the list, under a single item, to be put up and sold together; but that the articles mentioned in the sale bill shall be stated in the same order in which they are entered upon the inventory; so that the same may be readily compared by the court, and by parties interested in the estate. [38 v. 146, § 78; S. & C. 566.]

Sale-bill to be signed by clerk, sworn to by the executor or administrator, and filed, and returns of private sales to be sworn to.

SEC. 93. The sale-bill shall be signed by the clerk, and the executor or administrator shall make oath before some officer, authorized to administer oaths, that the same is, in all respects, correct, to the best of his knowledge and belief. The sale-bill, with a certificate of such oath annexed thereto, shall be filed, by the executor or administrator, in the probate court, within six weeks from the time of such sale, and all returns of private sales shall be sworn to by the executor or administrator. [38 v. 146, § 79; S. & C. 566.]

SEC. 94. If any executor or administrator shall refuse or neglect to return the said sale-bill, or fail to make return of

any private sale, within six weeks after the sale, the same proceedings may be had against him and his sureties, as [are] is provided in cases of neglect or refusal to return an inventory. [38 v. 146, § 80; S. & C. 566.]

How return of sale-bill enforced, unless, etc.

THE NOTICE TO CREDITORS: THE AUTHENTICATION AND PAYMENT OF DEBTS, AND PAYMENT OF LEGACIES.

When and how executor or administrator to give notice of his appointment.

SEC. 95. Every executor or administrator shall, within three months after giving bond for the discharge of his trust, cause notice of his appointment to be published in some newspaper of general circulation in the county, in which the letters were issued, for three consecutive weeks. [38 v. 146, § 81; S. & C. 566.]

What shall be evidence that notice was given.

SEC. 96. An affidavit of the executor or administrator, or of the person employed by him to give such notice, being made, filed, and recorded, together with a copy of the notice, in the probate court, within one year after giving bond as aforesaid, shall be admitted as evidence of the time, place, and manner in which the notice was given. [38 v. 146, § 82; S. & C. 566.]

In what order debts to be paid.

SEC. 97. Every executor and administrator shall proceed with diligence to pay the debts of the deceased, and shall apply the assets to the payment of debts, in the following order:

First—The funeral expenses, those of the last sickness, and the expenses of administration.

Second—The allowance made to the widow and children for their support for twelve months.

Third—Debts entitled to a preference, under the laws of the United States.

Fourth—Public rates and taxes, and sums due the state for duties on sales at auction.

Fifth—Debts due to all other persons.

When debts to be paid ratably.

And if there be not enough, after paying any one of said classes, to pay all the debts of the next of the other classes, all the creditors of the latter class shall be paid ratably, in proportion to their respective debts; and no payment shall be made to creditors of any one class, until all those of a preceding class or classes, of whose claims the executor or administrator shall have had notice, shall be fully paid. [38 v. 146, § 83; S. & C. 566: 64 v. 211; S. & S. 356.]

Previous section not to affect lien.

SEC. 98. Nothing in the preceding section shall affect or impair any lien, legal or equitable, which any creditor or other person shall have upon the personal estate of the deceased during his lifetime. [38 v. 146, § 84; S. & C. 566.]

Claims against estate, how authenticated.

SEC. 99. Upon any claim being presented against the estate of any deceased person, the executor or administrator may require satisfactory vouchers in support thereof, and also the affidavit of the claimant, that such claim is justly due, that no payments have been made thereon, and that there are no set offs against the same, to the knowledge of

Expense of authentication, by whom paid.

such claimant; which oath may be taken before any justice of the peace, or other officer authorized to administer oaths, and the expense thereof shall be allowed by the executor or administrator, if the claim itself is allowed. [38 v. 146, § 85; S. & C. 566.]

Doubtful claims against an estate to be referred to arbitrators.

SEC. 100. If the executor or administrator doubt the justice of any claim presented, and verified as aforesaid, he may enter into an agreement in writing, with the claimant, to refer the matter in controversy to three disinterested persons, who if the claim does not exceed one hundred dollars, shall be approved of by a justice of the peace of the county in which the letters were issued; or if the claim exceed one hundred dollars, the referees shall be approved of by the probate judge of such county. [50 v. 126, § 1; S. & C. 617.]

How proceeded on if claim is less than one hundred dollars.

SEC. 101. If the amount of said claim so referred shall not exceed one hundred dollars, upon filing the agreement of reference and the approval of the referees, with such justice of the peace as the parties may agree upon, the justice shall docket the cause, appoint a day of trial, issue a citation for the referees, and subpœnas for witnesses; and the cause shall be regulated, and shall, in all things, proceed as is provided for arbitration before justices of the peace, except, that if judgment is rendered against the executor or administrator for the debt, damages, or costs, it shall be rendered, and execution shall issue thereon, as in actions against executors and administrators. [38 v. 146, § 87; S. & C. 566.]

If it exceeds one hundred dollars.

SEC. 102. But if the claim so referred to arbitration exceed one hundred dollars, upon filing the agreement of reference, and the approval of the judge, with the clerk of the court of common pleas of the county in which the letters were issued, the said clerk shall docket the cause, and enter a rule, whether in vacation or in term, referring the matter in controversy to the persons so selected. [38 v. 146, § 88; S. & C. 566.]

Referees to report to court, etc.

Proceedings, powers, and compensation of referees.

Proceedings of the court on the report.

SEC. 103. The referees shall thereupon proceed to hear and determine the matter, and make their report thereon to the said court; and the same proceedings may be had before said referees, in all respects; the referees shall have the same powers, be entitled to the same compensation, as if the reference were made under the provisions made for arbitrations under a rule of the court of common pleas; and the court may set aside the report of the referees, or appoint others in their places, or confirm such report, and adjudge costs, as in actions against executors and administrators; and the judgment of the court thereupon shall be valid and effectual, in all respects, as in other cases. [38 v. 146, § 89; S. & C. 566.]

When claim barred, if not sued within six months after its rejection.

SEC. 104. If a claim against the estate of any deceased person be exhibited to the executor or administrator, before the estate is represented insolvent, and be disputed or rejected by him, and the same shall not have been referred, the claimant shall, within six months after such dispute or rejection, if the debt, or any part thereof, be then due, or

within six months after some part thereof shall have become due, commence a suit for the recovery thereof, or be forever barred from maintaining any action thereon; and no action shall be maintained thereon after the said period, by any other person deriving title thereto from such claimant. A claim shall be deemed disputed or rejected, if the executor or administrator shall, on presentation of the vouchers thereof, refuse, on demand made for that purpose, to indorse thereon his allowance of the same as a valid claim against the estate. [38 v. 146, § 90; S. & C. 566.]

What shall be deemed a rejection of a claim.

SEC. 105. If any heir or creditor of a deceased person, or any person who has purchased, or claims to hold, by purchase or otherwise, from such heir, any lands or other property inherited by such heir from such decedent, shall file in the probate court of the county in which administration is taken out on any estate, a written requisition on the administrator or executor, to disallow and reject any claim presented for allowance, and whether said claim has been allowed or not, but which has not been paid in full, and shall enter into an undertaking, with sufficient surety, to be approved by the probate judge, conditioned to pay all costs and expenses of contesting such claim, in case it shall be finally allowed, such claim shall, in such case, be disallowed and rejected by such administrator or executor, and the holder of such claim shall be required, within six months after such rejection of such claim, to bring his action against such administrator or executor, to enforce such claim, and if he recover, the judgment shall be against the said administrator or executor; and in such action, such heir, creditor, or other person claiming to hold such property, shall be made a party defendant with such administrator or executor, and shall have the right to plead and make any defense to such action which such administrator or executor could make; whenever such written requisition and undertaking shall be so filed in the probate court, the probate judge shall at once notify such administrator or executor thereof; and such administrator or executor shall thereupon at once notify the holder of such claim that such claim is rejected and disallowed; and if the proceedings shall have been commenced to sell the lands of such decedent to pay such claim, such proceedings shall be stayed, and no further order or decree taken therein, until after the validity of such claim shall have been determined, and if the plaintiff recover, the judgment shall be against the administrator or executor, but the costs shall be awarded against the party filing the requisition to disallow the claim. [74 v. 91, § 1.]

When claim shall be rejected at instance of heir or creditor.

Action against administrator or executor.

SEC. 106. No part of the assets of the deceased shall be retained by an executor or administrator, in satisfaction of his own debt or claim, until it shall have been proved to and allowed by the probate court; and such debt shall not be entitled to any preference over others of the same class. [38 v. 146, § 91; S. & C. 566.]

How debts due to an executor or administrator to be proved and paid.

Procedure on presentation of claim to probate court.

SEC. 107. Whenever an executor or administrator shall present to the probate court for its allowance, any debt or claim of which he is the owner, against the estate which he represents, amounting to fifty dollars or more, the court shall fix a day, not less than four weeks nor more than six weeks from the presentation of said debt or claim, when the testimony touching said debt or claim shall be heard; and the court shall forthwith issue an order, directed to said executor or administrator, requiring him to give notice in writing to all the heirs, legatees, or devisees of said decedent interested in said estate, and such creditors as are therein named, which notice shall contain a statement of the amount claimed, and designate the time fixed for hearing the testimony, and shall be served upon the persons named in said order at least twenty days before the time fixed for such hearing; and if any of the persons mentioned in said order are non residents of the county, service of said notice may be made upon them by publication for three consecutive weeks in a weekly newspaper, published or circulating in said county; all of the persons named in the order shall be deemed parties to the proceeding, and any other person having an interest in the estate, may come in and be made a party thereto. [70 v. 56, § 1.]

Hearing; exceptions; appeal.

SEC. 108. Upon the hearing as to the allowance of said debt or claim by the said court, exception may be taken to any decision of the court upon any matter of law, by any person who may be affected thereby, and bills of exception may be taken and allowed, and proceedings in error had after a final order or judgment as is provided in other cases; and an appeal may be taken to the court of common pleas of the proper county from any order or judgment of the probate court allowing or disallowing such debt or claim or any part thereof, by any person who may be affected thereby, when the amount claimed by such executor or administrator exceeds one hundred dollars; and the matter so appealed shall be tried, heard, and decided in said common pleas court in the same manner, and the proceedings therein shall be the same as nearly as may be practicable, as if the said common pleas court had original jurisdiction thereof, but without pleadings unless pleadings be ordered by the court to be filed; the person so appealing shall, within twelve days after the making of such order or judgment, give a written undertaking to the state, for the use of the persons who may be interested therein, with one or more sureties to be approved by the probate judge, conditioned that the person appealing shall pay all costs which may be awarded against him in the appellate court, and the bond shall be in such amount as the said probate judge may prescribe. [69 v. 105, § 2.]

SEC. 109. When two or more persons shall be indebted in any joint contract, or upon a judgment founded upon any

such contract, and either of them shall die, his estate shall be liable therefor, as if the contract had been joint and several, or as if the judgment had been against himself alone. [38 v. 146, § 92; S. & C. 566.]

How estate of a deceased joint debtor liable.

SEC. 110. The preceding section shall not be so construed as to affect the rights of a surety, when certified as such, in a judgment rendered jointly against him and his principal. [38 v. 146, § 93; S. & C. 566.]

Construction of preceding section.

SEC. 111. Debts not due may be paid by an executor or administrator, according to the class to which they may belong, after discounting the legal interest upon the sum paid for the time unexpired, if the claim does not bear interest before maturity. [38 v. 146, § 94; S. & C. 566.]

Debts not due may be paid upon rebate of interest.

SEC. 112. No execution shall issue upon a judgment against an executor or administrator, unless upon the order of the court which appointed him, or unless the eighteen months allowed by law, or the further time allowed by the court for the collection of the assets of the estate, have expired; and if an account has been rendered, and settled by the court, execution shall issue only for the sum that shall have appeared, on the settlement of such account, to have been a just proportion of the assets applicable to the judgment. [38 v. 146, § 95; S. & C. 566.]

How and when execution may issue against an executor or administrator.

SEC. 113. In suits for the recovery of money only, or of specific personal property against the estate, in which no provision is made herein in relation to costs, no costs shall be recovered against the executor or administrator, to be levied of his property or of the property of the deceased, unless it appear that the demand on which the action was founded, was presented within one year after his giving bond for the discharge of his trust, that its payment was unreasonably resisted or neglected, or that the defendant refused to refer the same, pursuant to the preceding provisions; in which case the court may direct such costs to be levied of the property of the defendant, or of the deceased, as shall be just, having reference to the facts that appeared on the trial. [38 v. 146, § 96; S. & C. 566.]

Against whom costs of suits on claims against an estate taxed.

SEC. 114. All executions against executors and administrators, for debts due from the deceased, shall, except in the cases otherwise provided for herein, run against the goods and estate of the deceased in their hands; and when any execution against an executor or administrator, for a debt due from the estate of the deceased, is returned unsatisfied, the creditor may bring an action, upon a suggestion of waste, against the executor or administrator, and if the defendant shall not show to the contrary, he shall be deemed guilty of waste, and shall be personally liable for the amount of such waste, when it can be ascertained; and if the amount of such waste can not be ascertained, the said executor or administrator shall be liable for the amount due on the original judgment, with interest thereon, from the time when it

Executions against executor or administrator.

Action upon suggestion of waste; trial and judgment thereon.

was rendered, and judgment and execution shall be awarded accordingly, as for his own debt. [38 v. 146, § 97; S. & C. 566.]

When executor or administrator to be liable to the suit of a creditor of the deceased.

SEC. 115. No executor or administrator shall be liable to the suit of a creditor of the deceased until after the expiration of eighteen months from the date of his administration bond, or the further time allowed by the court for the collection of the assets of the estate; unless it be for the recovery of a demand that would not be affected by the insolvency of the estate; or unless it be brought after the estate has been represented insolvent, for the purpose of ascertaining a claim that is contested; or unless the claim has been exhibited to the executor or administrator, and has been disputed or rejected by him. [38 v. 146, § 98; S. & C. 566.]

When executor or administrator may proceed to pay debts without being liable for deficiency of assets.

SEC. 116. If any executor or administrator, who shall have given notice of his appointment, as provided in this chapter, shall not, within one year thereafter have notice of demands against the estate, which will authorize him to represent it insolvent, he may, after the expiration of said one year, proceed to pay the debts due from the estate; and he shall not become personally liable to any other creditor, in consequence of any such payments made before notice of his demand, although the remaining estate should be insufficient to satisfy such last mentioned creditor. [38 v. 146, § 99; S. & C. 566.]

And if whole estate be paid, and afterwards other claims presented, he shall not be liable therefor.

SEC. 117. If any executor or administrator shall have paid away, in manner aforesaid, the whole of the estate and effects of the deceased, before notice of the demand of any other creditor, he shall not be required, in consequence of such new demand, to represent the estate insolvent, but may plead that fact; and upon proving such payments, he shall be discharged. [38 v. 146, § 100; S. & C. 566.]

If so much paid away as to leave less than amount of subsequently presented claims, what to be done.

SEC. 118. If any executor or administrator shall have paid away, in manner aforesaid, so much of the estate and effects of the deceased, that the remainder shall be insufficient to satisfy any demand of which he shall afterward have notice, he shall be liable to pay, on such last mentioned demand, only so much as may then remain in his hands; and if there be two or more such demands exhibited, which shall, together, exceed the amount of assets remaining in his hands, he may represent the estate insolvent, and shall divide and pay over what shall remain in his hands, to and among such creditors as shall prove their debts, under the commission of insolvency, pursuant to such order as the court shall make in that behalf; but the creditors of the deceased, who shall have been previously paid by the executor or administrator, as aforesaid, shall not be liable to refund any part of the amount so received by them. [38 v. 146, § 101; S. & C. 566.]

SEC. 119. If it shall appear, upon settlement of the administration account in court, that the whole estate and effects which have come to the hands of the executor or administrator, have been exhausted in paying the charges of

administration, the allowance to the widow and children of the deceased, and the charges of his last sickness and funeral, or any other debts or claims, entitled by law to a preference over the common creditors of the deceased, such settlement shall be a sufficient bar to any action brought against the executor or administrator, by any creditor who is not entitled to such preference; and the executor or administrator may plead and give the same in evidence, although the estate may not have been represented insolvent. [38 v. 146, § 102; S. & C. 566.]

If the assets are exhausted in paying preferred debts, executor or administrator may plead that he has fully administered.

SEC. 120. No executor or administrator, after having given notice of his appointment, as provided in this chapter, shall be held to answer to the suit of any creditor of the deceased, unless it be commenced within four years from the time of his giving bond as aforesaid, excepting in the cases hereinafter mentioned: provided, however, that any creditor whose cause of action shall accrue or shall have accrued after the expiration of four years from the time that the executor or administrator of such estate shall give or shall have given bond according to law, and before such estate is fully administered, may commence and prosecute such action at any time within one year after the accruing of such cause of action, and before such estate shall have been fully administered; and no cause of action against any executor or administrator shall be adjudged barred, by lapse of time, until the expiration of one year from the time of the accruing thereof. [38 v. 146, § 103; S. & C. 566: 45 v. 25, § 1; S. & C. 614.]

Limitation of actions by creditors.

Proviso as to claims accruing after four years.

SEC. 121. When assets shall come to the hands of an executor or administrator, after the expiration of the said four years, he shall account for, and apply the same, in like manner as if they had been received within four years; and he shall be liable to an action, and to be proceeded against on account of such assets, by or for the benefit of any creditor, in like manner as if the assets had been received within the said four years: provided, that such action or proceeding be commenced within one year after the creditor shall have notice of the receipt of such new assets, and not more than four years after the same shall be actually received [38 v. 146, § 104; S. & C. 566.]

Assets received after four years liable to creditors.

SEC. 122. Any creditor whose right of action shall not accrue within the said four years after the date of the administration bond, may present his claim to the court from which the letters issued, at any time before the estate is fully administered; and if, on examination thereof, it shall appear to the court that the same is justly due from the estate, it may, by the consent of the creditor and executor or administrator, order the same to be discharged, in like manner as if due, after discounting interest; or the court may order the executor or administrator to retain in his hands sufficient to satisfy the same; or if any of the heirs of the deceased, or devisees, or others interested in the estate,

Claim not due in four years may be presented to court, and if allowed may be paid, or money held to pay the same, or bond of heir, etc., taken for payment.

shall offer to give bond to the alleged creditor, with sufficient surety or sureties for the payment of the demand, in case the same shall be proved to be due from the estate, the court may, if it thinks fit, order such bond to be taken, instead of ordering the claim to be discharged as aforesaid, or requiring the executor or administrator to retain assets as aforesaid. [38 v. 146, § 105; S. & C. 566.]

Allowance of court not conclusive, and if there disputed must be paid in six months.

SEC. 123. The decision of the court thereon shall not be conclusive against the executor or administrator, or other person interested to oppose the allowance thereof; and they shall not be compelled to pay the same, if disputed by them, unless it shall be proved to be due, in an action to be commenced by the claimant, within six months after the same shall become payable. [38 v. 146, § 106; S. & C. 566.]

Against executor or administrator —against heir if he has given bond.

SEC. 124. The action for this purpose shall be brought against the executor or administrator, in case he shall have been required to retain assets therefor, or ordered to pay the same; but if the heirs or others interested in the estate shall have given bond, as before provided, the action shall be brought on the bond. [38 v. 146, § 107; S. & C. 566.]

Pleadings if suit be brought of heir, etc.

SEC. 125. If the action be brought on the bond, the plaintiff shall set out his demand as in an action against the executor or administrator, alleging the liability of the defendants by reason of the bond, and the defendants may plead any defense that would be available to the executor or administrator. [38 v. 146, § 108; S. & C. 566.]

Action of creditor against heirs, devisees, etc., not barred.

SEC. 126. Nothing herein contained shall prevent or bar the action or suit of any creditor, against the heirs, next of kin, devisees, or legatees of the deceased, as hereinafter provided. [38 v. 146, § 109; S. & C. 566.]

Limitation of actions against administrators de bonis non.

SEC. 127. When any executor or administrator shall die, resign, or be removed, or his letters shall have been revoked, or his powers shall have ceased, without having fully administered the goods and estate of the deceased, and a new administrator of the same estate shall be appointed, the time allowed to the creditors of the deceased, for bringing their actions, shall be enlarged as follows, to wit: to so much of the four years provided for the limitation of the said actions as shall have expired while the former executor or administrator continued in office, shall be added so much time after the appointment of the new administrator, as will make five years in the whole; and the new administrator shall not be held to answer to the suit of any creditor, commenced after the expiration of the said five years, excepting as is provided in the following sections. [38 v. 146, § 110; S. & C. 566.]

Administrator de bonis non liable for two years, at least.

SEC. 128. Every such new administrator shall, in all cases, be liable to the actions of the creditors for the space of two years after he shall have given bond for the discharge of his trust, although the whole time allowed to the creditors should be thereby extended beyond the said five years. [38 v. 146, § 111; S. & C. 566.]

Liable for four years in case, etc.

SEC. 129. If the former executor or administrator shall not have given notice of his appointment in the manner before prescribed in this chapter, the new administrator shall be liable to the actions of the creditors for the space of four years from the date of the bond given by such new administrator. [38 v. 146, § 112; S. & C. 566.]

Administrator de bonis non to give notice of his appointment.

SEC. 130. The new administrator shall give notice of his appointment in the same manner that is hereinbefore prescribed with respect to an original administrator; and if he shall fail so to do, he shall have no benefit of the limitations herein provided. [38 v. 146, § 113; S. & C 566.]

Claims previously barred, remain barred.

SEC. 131. Nothing in the four preceding sections contained shall be so construed as to revive a claim barred under this or any other act, during the continuance in office of the original executor or administrator, or of any former administrator de bonis non. [38 v. 146, § 114; S. & C. 566.]

To be further liable if new assets received.

SEC. 132. When assets shall come to the hands of such new administrator, after any of the periods above limited for the commencement of suits against him, he shall account for the same, and shall be liable to suits and proceedings on account of such new assets, in like manner as is provided in this chapter with respect to any original administrator. [38 v. 146, § 115; S. & C. 566.]

Cases where notice of appointment is not given within the proper time, or evidence not perpetuated.

SEC. 133. If notice shall not be given of the appointment of any executor or of any original administrator, or administrator de bonis non, within the three months hereinbefore prescribed for that purpose, or the evidence thereof shall fail to be perpetuated as hereinbefore provided, and cannot be made, the court may, on the petition of the executor or administrator, order and allow such notice to be given at any time afterward, in which case the said four years, and other periods of time, which are hereinbefore limited for the commencement of actions against executors and administrators, and for other purposes, and which begin to run as before directed, from the date of the administration bond, shall begin to run respectively from the time such order of court is made, if notice be published according thereto. [38 v. 146, § 116; S. & C. 566.]

Liability for damage caused by omission of the notice t continue.

SEC. 134 No order of court, made by virtue of the preceding section, shall exempt the executor or administrator, or their respective sureties, from their liability for any damages for which they would have been otherwise liable, by reason of the omission to give notice within the said three months. [38 v. 146, § 117; S. & C. 566.]

If any legatee require legacy to be paid within four years, court may require him to give bond.

SEC. 135. When any executor or administrator shall, within four years after having given bond for the discharge of his trust, be required, by any legatee or next of kin, to make payment in whole or in part, of his legacy or distributive share, the court may, if it thinks fit, require that the legatee or next of kin, first give bond to the executor or administrator, with surety or sureties to be approved by the court, with condition to refund the amount so to be paid, or

as much thereof as may be necessary to satisfy any demands that may be afterward recovered against the estate of the deceased, and to indemnify the executor or administrator against all loss and damage on account of such payment. [38 v. 146, § 118; S. & C. 566.]

FOREIGN EXECUTORS AND ADMINISTRATORS.

Foreign executors and administrators may be sued here.

SEC. 136. An executor or administrator, duly appointed in any other state or country, or his legal representatives, may be prosecuted in any appropriate court in this state, in his capacity of executor or administrator. [45 v. 52, § 1; S. & C. 613.]

How the provisions of this chapter apply to them.

SEC. 137. The several provisions concerning the settlements of the estates of deceased persons, and also the remedies and proceedings herein given against executors and administrators appointed by the law of this state, shall apply to and be in full force and effect as to any foreign administrator or executor appointed by the laws of any other state or country, and residing in this state, or having assets or property in the same, and the several courts of probate, and courts of common pleas, and superior courts, shall have like power and authority over said foreign executor and administrator the same as if appointed by the laws of this state. [54 v. 3, § 1; S. & C. 615.]

How proceeded against.

SEC. 138. Any court of common pleas or superior court in this state may compel any foreign administrator or executor residing in this state, or having assets or property in the same, to account at the suit of any heir, distributee, or legatee, who is resident in this state, and may make distribution of the amount found in his hands to the respective heirs, distributees, or legatees, according to the law of the state granting said letters; and when there are suits pending, or any unsettled demands against said estate, the court may require a refunding bond to be given to said executor or administrator by the heirs, distributees, or legatees entitled thereto in case the amount paid shall be needed for the purpose of paying debts of said estate. [54 v. 3, § 2; S. & C. 615.]

May be required to secure distributees and indemnify sureties, etc.

SEC. 139. When any foreign administrator or executor has wasted, misapplied, or converted any of the assets of said estate, or has insufficient property to discharge his liability on account of said trust, or his sureties are irresponsible, any distributee, heir, or legatee, may compel him in any such court, to secure the amount that may be respectively due to them as aforesaid, and any of his sureties may require indemnity on account of their liability as bail, and the several provisional remedies and proceedings authorized in said courts, shall apply to the person and property of said administrator or executor, and said courts shall have full power and authority to make any order or decree touching his property and effects, or the assets of said estate, necessary

for the safety and security of those interested therein. [54 v. 3, § 3; S. & C. 615.]

Foreign executor or administrator may prosecute suit in this state.

SEC. 140. An executor or administrator, duly appointed in any other state or country, may commence and prosecute any action or proceeding, in any court in this State, in his capacity of executor or administrator, in like manner and under like restrictions, as a non resident may be permitted to sue. [38 v. 146, § 242; S. & C. 566.]

ACTION FOR INJURY BY WRONGFUL DEATH.

Right of action given to representative for causing death.

SEC. 141. Whenever the death of a person shall be caused by wrongful act, neglect, or default, and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof; then, and in every such case, the person who, or the corporation which would have been liable, if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances, as amount in law to murder in the first or second degree, or manslaughter. [49 v. 117, § 1; S. & C. 1139.]

For whose benefit, and by whom brought.

SEC. 142. Every such action shall be for the benefit of the wife or husband and parents and children, or if there be neither of them, then of the next of kin, of the person whose death shall be so caused, and it shall be brought by and in the name of the personal representative of the person deceased; and in every such action the jury may give such damages, not exceeding in any case ten thousand dollars, as they may think proportioned to the pecuniary injury resulting from such death, to the persons, respectively, for whose benefit such action shall be brought; and the amount recovered, after deducting the costs and expenses chargeable to such representative, shall be divided among the before mentioned persons in such proportions as the jury by their verdict may find and direct. [69 v. 22, § 2.]

Limit of damages.

To be distributed as jury direct.

SALE OF REAL ESTATE FOR PAYMENT OF DEBTS, AND DISTRIBUTION OF PROCEEDS.

When executor or administrator shall apply for a sale of real estate to pay debts.

SEC. 143. As soon as the executor or administrator shall ascertain that the personal estate in his hands will be insufficient to pay all the debts of the deceased, with the allowance to the widow and children, for their support, twelve months, and the charges of administering the estate, he shall apply to the probate court or the court of common pleas for authority to sell the real estate of the deceased. [38 v. 146, § 119; S. & C. 566.]

Where and how application shall be made.

SEC. 144. In order to obtain such authority, the executor or administrator shall commence a civil action in the probate court or the court of common pleas of either the county in

which the real estate of the deceased, or any part thereof, is situate, or of the county in which were issued his letters testamentary or of administration. [38 v. 146, § 120; S. & C. 566.]

Administrator de bonis non to complete proceedings begun by his predecessor.

SEC. 145. If the executor or administrator, who shall commence such action, for the sale of real estate, shall die, resign, or be removed, or his powers shall cease at any time before the conveyance of the same, under an order of the court, the administrator de bonis non shall proceed with such sale, and may convey the land sold before or after his appointment, and may be required to give an additional bond in like manner as if such administrator de bonis non had filed the petition. [38 v. 146, § 152; S. & C. 566: 43 v. 20, § 1; S. & C. 613.]

When real estate fraudulently conveyed, liable to sale.

SEC. 146. The real estate liable to be sold as aforesaid, shall include all that the deceased may have conveyed with intent to defraud his creditors, and all other rights and interests in lands, tenements, and hereditaments: provided, that lands so fraudulently conveyed, shall not be taken from any one who purchased them for a valuable consideration, in good faith, and without knowledge of the fraud; and no claim to lands so fraudulently conveyed, shall be made, unless within four years next after the decease of the grantor. [38 v. 146, § 121; S. & C. 566.]

How executor or administrator to get possession of land fraudulently conveyed, and avoid such conveyance.

SEC. 147. If land is to be included in such action which has been so fraudulently conveyed, the executor or administrator may either before or at the same time, bring an action for the recovery of the possession of such land; or he may in his action for the sale thereof allege the fraud and have the fraudulent conveyance avoided therein; but when such land is included in the application before a recovery of the possession thereof the action shall be in the court of common pleas. [38 v. 146, § 122; S. & C. 566.]

What petition for sale must contain.

SEC. 148. The petition shall, in all cases, set forth the amount of debts due from the deceased, as nearly as they can be ascertained, and the amount of the charges of administration, the value of the personal estate and effects, and a description of the real estate, and the value thereof, if appraised. [38 v. 146, § 123; S. & C. 566.]

Who are necessary parties.

SEC. 149. In such action the widow of the deceased, and the heirs, devisees, or persons having the next estate of inheritance from the deceased, and all mortgagees and other lien holders, whether by judgment or otherwise, of any of the lands sought to be sold, and all trustees holding the legal title thereto or to any part thereof; and when a fraudulent conveyance is sought to be set aside in such action, all persons holding or claiming thereunder, shall be made parties. [38 v. 146, § 124; S. & C. 566: 55 v. 157, § 1; S. & C. 622.]

Service and waiver of same.

SEC. 150. Service either actual or constructive shall be made in the same manner as in other civil actions: provided, that if all persons in interest consent in writing to the sale, service of process may be dispensed with and legal guardians

may sign such consent for their wards, except guardians of the persons only of minors; and all proceedings in the action in either court shall be the same as in other civil actions, except as otherwise herein provided. [38 v. 146, §§ 125, 126, 128; S. & C. 566.]

Legal guardians may consent.

Other proceedings.

SEC. 151. It shall not be necessary, unless the prayer of the petition for a sale is contested, to appoint guardians ad litem for infant heirs or devisees or other persons having the next estate of inheritance from the deceased who are defendants; and no such guardian shall have authority to waive notice or service of summons. [38 v. 146, § 127; S. & C. 566.]

When guardians ad litem to be appointed.

They have no power to consent.

SEC. 152. The probate court or court of common pleas in which such action may be pending, shall have full power to determine the equities between the parties and the priorities of lien of the several lien holders on said real estate, and to order a distribution of the money arising from the sale of such real estate, according to the respective equities and priorities of lien as found by the court. [55 v. 157, § 2; S. & C. 622]

Courts to settle priorities of liens in such cases.

SEC. 153. An order for the sale of the real estate shall not be granted if any of the persons interested in the estate shall give bond to the executor or administrator, in a sum and with sureties to be approved of by the court, with condition to pay all the debts mentioned in the petition that shall eventually be found due from the estate, with the charges of administering the same, and the allowance in money to the widow, so far as the personal estate of the deceased shall be insufficient therefor. [38 v. 146, § 129; S. & C. 566.]

Persons interested may give bond and prevent the sale.

SEC. 154. If the court is satisfied that it is necessary to sell real estate of the deceased to pay his debts, it shall order the real estate, or so much thereof as may be necessary for the payment of the debts, to be sold by the executor or administrator, upon deferred payments, not exceeding two years, with interest. [38 v. 146, § 130; S. & C. 566.]

When court to order real estate to be sold.

Terms of sale.

SEC. 155. The court may include in its order of sale, the title of the heirs or devisees of the deceased, in the premises set off to the widow for her dower, which may be sold subject to the life estate of the widow therein. [38 v. 146, § 131; S. & C. 566.]

The estate of the heirs in the land set off to the widow may be sold.

SEC. 156. If it shall be represented in such petition and shall appear to the court that it is necessary to sell some part of the real estate, and that, by such partial sale, the residue of the estate, or some specific part or piece thereof, would be greatly injured, the court may order a sale of the whole of the estate, or of such part thereof as the court shall think necessary and most for the interest of all concerned therein. [38 v. 146, § 132; S. & C. 566.]

The whole to be sold when a partial sale would injure the residue.

SEC. 157. When, in cases named in the next preceding section, the executor or administrator is ordered to sell more than is necessary for the payment of the debts, he shall, before the sale, give bond with sufficient sureties payable to the

To give further bond to account for surplus, etc.

state, conditioned to account for all the proceeds of the sale that shall remain, after payment of the debts and charges for which the land shall be sold, and to dispose of the same according to law. [38 v. 146, § 133; S. & C. 566.]

To give further bond in other cases, if required, and in what court to be given.

SEC. 158. The court may also require of any executor or administrator, if it shall deem it necessary, before such sale, to give an additional administration bond, to secure the further assets arising from the sale of the real estate, and the bond mentioned in this section, and the bond mentioned in the next preceding section, shall, when so ordered to be given, be given in the court from which the letters were issued, and if the action is pending in another court, the latter court shall proceed no further till there is filed therein a certificate from the former court, under the seal thereof, that such bond has been given as ordered. [38 v. 146, § 134; S. & C. 566.]

When assets will be marshaled in conformity with the will.

SEC. 159. If there should be in the last will of the deceased any disposition of his estate for the payment of his debts, or any provision that may require or induce the court to marshal the assets, in any manner different from that which the law would otherwise prescribe, such devises, or parts of the will, shall be set forth in the petition, and a copy of the will shall be exhibited to the court, and the assets shall be marshaled accordingly, so far as it can be done, consistently with the rights of the creditors. [38 v. 146, § 135; S. & C. 566.]

Costs when there are objections to granting order for sale, etc.

SEC. 160. If any party shall, in his answer, object to the granting an order for the sale of the real estate, by an executor or administrator, and it shall on hearing appear to the court that either the petition or the objection thereto is unreasonable, it may, in its discretion, award costs to the party prevailing on that issue. [38 v. 146, § 136; S. & C. 566.]

Appraisement when no dower is to be assigned.

SEC. 161. If the deceased did not leave a widow, entitled to dower in the estate to be sold, and an appraisement of such real estate is contained in the inventory, the court may order a sale according to said appraisement, or order a new appraisement. If the court do not order a new appraisement, the appraisement set forth in the inventory shall be deemed the appraised value of the real estate; but if the court order a new appraisement, the value returned by such appraisers shall be deemed the appraised value of the real estate. The order of sale, and the order for the appraisement, may be made at the same time, if no assignment of dower is required. [38 v. 146, §§ 137, 138, 139; S. & C. 566.]

Order of sale and appraisement may be made at the same time.

Appointment of appraisers; their duty as to dower.

SEC. 162. Except in cases where there has been a valuation of the real estate in the inventory, and the court dispense with another appraisement, the court shall, upon finding that a sale is necessary, appoint three judicious, disinterested men of the vicinity, who are freeholders, to appraise the lands at their true value in money: and, if the deceased left a widow entitled to dower in the premises, the

court shall also order that said freeholders set off and assign to her, in each or in one or more of the tracts of land, by metes and bounds, one equal third part of the whole lands in which she is entitled to dower, as and for such dower, and to appraise the whole premises, either as a whole or in parcels, subject to such dower so assigned; but if on view, the appraisers find that the dower cannot be so assigned, they shall then assign such dower specially as of the rents and profits; and if the lands lie in two or more counties, the court may, if it think fit, appoint appraisers in more than one of the counties. In all cases a copy of the order to be executed shall be issued to the executor or administrator. [66 v. 349, § 140: 38 v. 146, § 141; S. & C. 566.]

Copy of order to issue.

Vacancy in appraisers, how filled.

SEC. 163. When any person appointed by the court as an appraiser, fails to discharge his duties, the probate judge or any justice of the peace of the county in which the lands to be appraised are situate, may, at the instance of the executor or administrator, appoint an appraiser, of which appointment the officer appointing shall make and sign a certificate which shall be returned with the appraisement; or the executor or administrator may apply to the court making the order of appraisement and have another appraiser appointed thereby. [49 v. 25, § 4; S. & C. 613.]

Widow may waive assignment of dower and take its value in money:

SEC. 164. The widow may, in her answer, waive the assignment of dower by metes and bounds or in the rents and profits, and, consenting to have the premises sold free of dower, ask the court to allow her in lieu thereof such sum of money out of the proceeds as the court may deem the reasonable value of her dower interest therein; and in such case, upon the sale of the lands free of dower, and the awarding to her such sum, her said answer shall have the force and effect as a deed of release of her dower to the purchaser of the lands. [74 v. 201, §§ 1, 2.]

And guardian of insane widow may so waive dower.

SEC. 165. If the widow shall have been adjudged insane or imbecile, her guardian may, with the consent and approval of the judge of the court in which the action is pending, file such answer in her behalf, and it shall have the same force and effect as if she were not under disability, and filed the same personally. [74 v. 201, § 3.]

Appraisers to be sworn, etc., certificate thereof, view and return.

SEC. 166. The appraisers shall be sworn by some officer authorized to administer oaths, and a certificate thereof shall be inserted in or annexed to their return; and they shall afterward, upon actual view, perform the duties required of them by the order of the court, and make return of their proceedings in writing to the court. [38 v. 146, § 142; S. & C. 566.]

Compensation of appraisers.

SEC. 167. The appraisers shall each receive one dollar per day, for services performed by them in the county in which they reside, and two dollars per day for services performed without such county. [38 v. 146, § 143; S. & C. 566.]

Notice of sale.

SEC. 168. The executor or administrator shall, if the sale is to be public, give notice of the time and place of sale, by

advertising the same, at least four weeks successively, in some newspaper printed in the county where the lands are situate; or if no newspaper be printed therein, by advertisements posted up in at least five public places in the county, four weeks before the day of sale. [38 v. 146, § 144; S. & C. 566.]

For what amount the lands may be sold: New appraisement or order to sell at price fixed.

SEC. 169. The lands, if improved, shall not be sold for less than two thirds of the appraised value; and if not improved, for not less than one-half the appraised value; but after being twice offered for sale, the court may direct the amount for which they shall be sold, or may set aside the appraisement and order a new one. [38 v. 146, § 145; S. & C. 566.]

When sale to be made at vendue, and when at private sale.

SEC. 170. The sale shall be made at public vendue, at the door of the court house in the county in which the order of sale shall have been made, or at such other place as the court may direct: provided, however, that if it is made to appear to the court that it will be more for the interest of said estate to sell such real estate at private sale, the court may authorize said petitioner to sell the same, either in whole or in part, for cash in hand, or upon deferred payments, not exceeding two years, with interest; and in no case shall such real estate be sold at private sale for less than the appraised value thereof. [68 v. 20, § 146.]

Return of sale to court, confirmation, order for deed.

SEC. 171. The executor or administrator shall make return of his proceedings, under the order of sale; and the court after having carefully examined such return, and being satisfied that the sale has in all respects been legally made, shall confirm the sale, and order the executor or administrator to make a deed to the purchaser; and may, in the order, require that before the delivery of such deed the deferred installments of the purchase money shall be secured by mortgage. [38 v. 146, § 147; S. & C. 566.]

The deed evidence of the validity of the sale; what estate shall pass by it.

SEC. 172. The deed of the executor or administrator, made in pursuance of the order of the court, shall be received in all courts as prima facie evidence that the executor or administrator in all respects observed the directions and complied with the requisitions of the law, and shall vest the title in the purchaser, in like manner as if conveyed by the deceased in his lifetime. [38 v. 146, § 148; S. & C. 566.]

Dower specially assigned to be a charge on the land.

SEC. 173. If the appraisers shall have assigned dower specially of the rents and profits, and the purchaser takes, by the deed of the executor or administrator, the lands upon which such dower has been assigned, the court shall make such orders as will secure to the widow a charge on such lands, for the dower so assigned. [38 v. 146, § 149; S. & C. 566.]

How money arising from sale of land to be applied.

SEC. 174. The money arising from the sale of real estate shall be applied in the following order:

First—To discharge the costs and expenses of the sale, and the per centum and charges of the executor or administrator thereon, for his administration of the same.

Second—To the payment of mortgages and judgments against the deceased, according to their respective priorities of lien, so far as the same operate as a lien on the estate of the deceased, at the time of his death; which shall be apportioned and determined by the court, on reference to a master or otherwise.

Third—To the discharge of claims and debts, in the order mentioned in this title. [38 v. 146, § 150; S. & C. 566.]

Sale of equitable interest; proceedings.

SEC. 175. When a petition is filed for the sale of an equitable estate, or any equitable interest, which the deceased held in any lands, the executor or administrator shall set forth in the petition the nature of such equitable estate or interest, making all necessary parties, including the persons holding the legal title thereto and those who are entitled to the purchase money therefor; and the court may, in such case, notwithstanding the preceding provisions of this title, make such order for the appraisement and sale of such equitable estate, for the indemnity of the estate of the deceased against the claim for such purchase money, and for the adjustment of the dower of the widow of the deceased, in such equitable estate, by estimating and directing to be paid to her the value of a life annuity in one-third of such equitable estate or otherwise, as it may deem just and right, between all parties in interest. [38 v. 146, § 151; S. & C. 566.]

When sale is authorized by will, no order of sale required.

SEC. 176. If any executor or administrator, duly qualified, is authorized by will or devise, to sell real estate, no order shall be required from the court to authorize him to act in pursuance of the power vested in him by such will. [38 v. 146, § 153; S. & C. 566.]

Foreign executor or administrator may be authorized to sell real estate.

SEC. 177. When an executor or administrator shall be appointed in any other state, territory, or foreign country, on the estate of any person dying out of this state, and no executor or administrator thereon shall be appointed in this state, the foreign executor or administrator may file an authenticated copy of his appointment in the probate court of any county in which there may be any real estate of the deceased, together with an authenticated copy of the will, if there be one; after which he may be authorized, under an order of the court, to sell real estate for the payment of debts or legacies and charges of administration, in the same manner and upon the same terms and conditions as are prescribed in the case of an executor or administrator appointed in this state, excepting in the particulars in which a different provision is hereinafter made. [38 v. 146, § 154; S. & C. 566.]

To give bond unless he is already bound.

SEC. 178. When it shall appear to the court granting the order of sale that such foreign executor or administrator is bound with sufficient surety or sureties in the state or country in which he was appointed, to account for the proceeds of such sale, for the payment of debts or legacies and charges of administration, and a copy of such bond, duly authenticated, shall be filed in court, no further bond for that pur-

pose shall be required of him here; otherwise, before making such sale, he shall give bond, with two or more sufficient sureties, to the state of Ohio, with condition to account for and dispose of the said proceeds for the payment of the debts or legacies of the deceased and the charges of administration, according to the laws of the state or country in which he was appointed. [38 v. 146, § 155; S & C. 566.]

To give further bond to account for surplus, when he sells more than is necessary to pay, etc.

SEC. 179. When such foreign executor or administrator is authorized by order of the court to sell more than is necessary for the payment of debts, legacies, and charges of administration, as hereinbefore provided, he shall, before making the sale, give bond, with two or more sufficient sureties, to the state of Ohio, with condition to account, before the court, for all the proceeds of the sale that shall remain after payment of said debts, legacies, and charges, and to dispose of the same according to law. [38 v. 146, § 156; S. & C. 566.]

Surplus proceeds of sale of real estate to be considered as real estate.

SEC. 180. In all cases of a sale by an executor or administrator of part or the whole of the real estate of the deceased, under an order of court, whether such executor or administrator shall have been appointed in this state or elsewhere, the surplus of the proceeds of the sale remaining on the final settlement of the account, shall be considered as real estate, and shall be disposed of accordingly. [38 v. 146, § 157; S. & C. 566.]

Sale may be ordered for the payment of legacies.

SEC. 181. When a testator shall have given any legacy by will that is effectual to pass or charge real estate, and his personal estate shall be insufficient to pay such legacy, together with his debts, the allowance to the widow and children, and the costs of administration, the executor or administrator, with the will annexed, may be ordered to sell his real estate for that purpose, in the same manner and upon the same terms and conditions as are prescribed herein for the payment of debts. [38 v. 146, § 158; S. & C. 566.]

If proceedings for partition are commenced, and a deficiency of assets is found, the executor or administrator shall procure certificate thereof from probate court.

SEC. 182. If at any time after the institution of proceedings for the partition of the lands of any deceased person, it is found that the assets in the hands of the executor or administrator of such deceased, are probably insufficient to pay the indebtedness of the estate and expenses of administration, the executor or administrator shall make a written statement to the probate court of the said assets and indebtedness and expenses, and the court shall forthwith ascertain the amount necessary to pay the said indebtedness and expenses in addition to the assets, and give a certificate thereof to the executor or administrator. [74 v. 167, § 1.]

Court shall order so much of proceeds to be paid over to him.

SEC. 183. The executor or administrator shall thereupon present said certificate to the court in which the proceedings for partition are, or have been pending, and on his motion said court shall order the amount named in said certificate as necessary, to be paid over to the executor or administrator out of the proceeds of the sale of the premises, if the same shall be thereafter sold, or have already been sold: provided,

that nothing herein contained shall be so construed as to prohibit any executor or administrator from proceeding to sell lands belonging to such estate to pay debts, when the same has been sold on partition or otherwise, or the proceeds of such sale fully distributed. [74 v. 167, § 2.] Proviso.

THE ACCOUNT AND COMPENSATION OF AN EXECUTOR OR ADMINISTRATOR; AND DISTRIBUTION IN CERTAIN CASES.

Executor or administrator to render an account, etc.

SEC. 184. Every executor or administrator shall, within eighteen months after having given bond for the discharge of his trust, render his account of his administration upon oath, and he shall in like manner render such further accounts of his administration, from time to time, and every twelve months thereafter; and also at such other times as may be required by the court until the estate shall be wholly settled; and he may be examined on oath upon any matter relating to his accounts, the payments therein mentioned, and also touching any property or effects of the deceased which have come to his hands: provided, that when an executor or administrator has died before the estate is fully administered, it shall be the duty of the executor or administrator of such deceased executor or administrator to render a final account of such decedent's administration within six months after his appointment. [71 v. 77, § 161.]

Account rendered by two may be allowed upon oath of one.

SEC. 185. When any account is rendered by two or more joint executors or administrators, the court may, in its discretion, allow the account upon the oath of any one of them. [38 v. 146, § 162; S. & C. 566.]

Time allowed to collect assets not to dispense with account.

SEC. 186. The time allowed by the court to collect the assets of the estate, shall not operate as an allowance of further time to file the accounts mentioned in the preceding sections. [38 v. 146, § 163; S. & C. 566.]

How compelled to render an account.

SEC. 187. If any executor or administrator shall fail to render his accounts, as hereinbefore directed, he may be compelled to do so in the manner hereinbefore directed to compel the return of an inventory; and the same proceedings may be had to attach the party, and to discharge him, and the like revocation of the letters granted to him may be made, in case of the party's absconding or concealing himself, so that no order can be personally served, or of his neglecting to render an account within thirty days after being committed; and new letters shall be granted with the like effect and like remedies as in those cases. [38 v. 146, § 164; S. & C. 566.]

With what executor or administrator shall be charged.

SEC. 188. Every executor or administrator shall be chargeable with the amount of the sale bill, as hereinbefore provided, and also, with all goods, chattels, rights, and credits of the deceased which shall come to his hands, and which are by law to be administered, although they should not be included in the inventory or sale bill; also, with all the proceeds of real estate, sold for the payment of debts

or legacies, and with all the interest, profit, and income that shall in any way come to his hands from the personal estate of the deceased. [38 v. 146, § 167; S. & C. 566.]

Increase or decrease of estate not to affect executor or administrator.

SEC. 189. No profits shall be made by executors or administrators, by the increase, nor shall they sustain any loss by the decrease or destruction, without their fault, of any part of the estate. [38 v. 146, § 168; S. & C. 566.]

Executor not responsible for bad debts.

SEC. 190. No executor or administrator shall be accountable for any debts, inventoried as due to the deceased, if it shall appear to the court that they remain uncollected without his fault. [38 v. 146, § 169; S. & C. 566.]

How chargeable with property consumed by him.

SEC. 191. If any executor or administrator shall neglect to sell any portion of the personal property which he is bound by law to sell, and retains, consumes, or disposes of the same, for his own benefit, he shall be charged therewith at double the value affixed thereto by the appraisers. [38 v. 146, § 170; S. & C. 566.]

Vouchers to be produced for all debts paid.

SEC. 192. In rendering such account, every executor or administrator shall produce vouchers for all debts and legacies paid, and for all funeral charges and just and necessary expenses, which vouchers shall be filed with the account, and they, together with the account, shall be deposited and remain in the probate court. [38 v. 146, § 171; S. & C. 566.]

What items may be allowed without vouchers.

SEC. 193. On the settlement of an account of an executor or administrator, he may be allowed any item of expenditure, not exceeding ten dollars, for which no voucher is produced, if such item be supported by his own oath positively to the fact of payment, specifying when and to whom such payment was made, and if such oath be uncontradicted; but such allowance shall not, in the whole, exceed two hundred dollars, for payments in behalf of any one estate. [38 v. 146, § 172; S. & C. 566.]

The court may allow for a tombstone.

SEC. 194. The court may also, on settlement, allow, as a credit to the executor or administrator, any just and reasonable amount expended by him for a tombstone or monument for the deceased; but it shall not be incumbent on any executor or administrator to procure a tombstone or monument. [64 v. 35, § 1; S. & S. 356.]

Court may refer account to special commissioner.

SEC. 195. The court may, if it shall deem it expedient and proper, refer the account and the exceptions thereto, if any, to a special commissioner, appointed by the court for that purpose. [38 v. 146, § 173; S. & C. 566.]

When and how account may be opened after settlement.

SEC. 196. When an account is settled in the absence of any person adversely interested, and without actual notice to him, the account may be opened, on his filing exceptions to the account, at any time within eight months thereafter; and upon every settlement of an account by an executor or administrator, all his former accounts may be so far opened as to correct any mistake or error therein; excepting that any matter of dispute between two parties, which had been previously heard, and determined by the court, shall not be

again brought in question, by either of the same parties, without leave of the court. [38 v. 146, § 174; S. & C. 566.]

Commissions to be allowed executor or administrator for collection.

SEC. 197. Executors and administrators may be allowed the following commissions upon the amount of the personal estate collected and accounted for by them, and of the proceeds of the real estate sold under an order of court for the payment of debts, or under directions of the will which shall be received in full compensation for all their ordinary services; that is to say:

For the first thousand dollars, at the rate of six per centum;

For all above that sum, and not exceeding five thousand dollars, at the rate of four per centum; and

For all above five thousand dollars, at the rate of two per centum.

Further allowances.

And in all cases, such further allowance shall be made as the court shall consider just and reasonable for actual and necessary expenses, and for any extraordinary services, not required of an executor or administrator, in the common course of his duty: provided, however, that when provision shall be made by the will of the deceased, for compensation to any executor, the same shall be deemed a full satisfaction for his services, in lieu of his aforesaid commissions or his share thereof, unless he shall, by an instrument filed in court, renounce all claim to such compensation given by the will. [38 v. 146, § 175; S. & C. 566.]

Effect of compensation provided by will.

Executor or administrator may distribute certain assets in kind.

SEC. 198. If an executor or administrator shall have paid all the debts of the estate, without disposing of all the notes, bonds, stocks, claims, and other rights in action, belonging to the estate, he may, with the approval of the probate court, entered on the journal at or after the settlement of the estate, and with the assent and agreement of the persons entitled to such assets as distributees, or otherwise, distribute and pay over the same in kind to those of such persons as will receive the same: and such distribution shall have the same force and effect as the distribution of the proceeds of such assets.

When executor or administrator has paid over money or property to persons entitled thereto, how he may obtain final discharge.

SEC. 199. When an executor or administrator has paid or delivered over to the persons entitled thereto, the money or other property in his hands as required by the order of distribution, or otherwise, he may perpetuate the evidence of such payment by presenting to the court, within one year after such order was made, an account of such payments, or the delivery over of such property; which being proved to the satisfaction of the court, and verified by the oath of the party, shall be allowed as his final discharge, and ordered by the court to be recorded; and such discharge shall forever exonerate the party and his sureties from all liability under such order, unless his account shall be impeached for fraud or manifest error. [38 v. 146, § 176; S. & C. 566.]

SEC. 200. If any sum of money directed by a decree or order of the court to be distributed to heirs, next of kin, or legatees, shall remain for the space of six months unclaimed, the executor or administrator who was ordered to pay over

Moneys belonging to heirs, etc., unclaimed to be invested, and how.

the same, may, by order of the court, invest the same in stocks, or loan the same on bond and mortgage, as the court shall direct, to accumulate for the benefit of the persons entitled thereto; and such investment shall be made in the name of the judge of the court for the time being, and shall be subject to the order of the judge and his successors in office, as hereinafter provided; and the person making such investment shall file in the court a memorandum thereof, with the original certificates, or other evidence of title thereto, which shall be allowed as a sufficient voucher for such payment under the said order or decree. [38 v. 146, § 177; S. & C. 566.]

When court to cause such moneys to be paid over.

SEC. 201. When the person entitled to the money invested shall satisfy the court of his right to receive the same, the court shall cause it to be paid over and transferred to him. [38 v. 146, § 178; S. & C. 566.]

Who responsible for safe-keeping of evidences of title, etc., to such moneys.

SEC. 202. The judge with whom such certificates or evidences of title are deposited, for the time being, and each succeeding judge to whom they shall come, and his sureties, shall be responsible for their safe-keeping and application, as provided in the two preceding sections of this chapter. [38 v. 146, § 179; S. & C. 566.]

Amount of personal estate to which widow is entitled as distributee.

SEC. 203. When the intestate shall not have left any legitimate child, heir of his body, the widow shall be entitled to all the personal estate, as next of kin, which shall be subject to distribution upon settlement of the estate; and if the intestate shall have left such child, the widow shall be entitled, upon distribution, to one-half of any sum not exceeding four hundred dollars, and to one-third of the residue of the personal estate subject to distribution. [38 v. 146, § 180; S. & C. 566.]

How payment of order of distribution enforced.

SEC. 204. After thirty days from the time of the settlement of the account of an executor or administrator shall have been made or shall hereafter be made by the probate court, and an order of distribution made thereon, if such executor or administrator shall neglect or refuse to pay to any person interested in said order of distribution, as creditor, legatee, widow, heir, or other distributee, or otherwise, when demanded, his or her share of the estate or property ordered to be distributed by such probate court, it shall be lawful for any person interested, as aforesaid, to file a petition in the probate court against the executor or administrator making such settlement of his or her account, as aforesaid, briefly setting forth in the petition the amount and nature of the claim of the party filing such petition, whereupon the probate judge shall forthwith issue a citation against such executor or administrator, setting forth the filing of the petition, the amount claimed by the petitioner, and commanding such executor, administrator, or guardian, to appear before said probate court on the return day thereof, to answer said petition, and show cause, if any, why judgment should not be rendered and execution awarded against him or her

for the amount claimed by such petitioner, and found to be due upon such settlement and order of distribution, which citation shall be made returnable not less than twenty nor more than forty days from the date thereof, which shall be served and returned by the sheriff or other proper officer, as in the case of a summons, and may issue to any county in the State. [54 v. 202, § 1; S. & C. 619.]

If defendant non-resident, how service made.

SEC. 205. But if such executor or administrator shall reside out of this state, the court being satisfied of that fact, either before or after the return of the citation, may order such non-resident to be brought into court, by publication in some newspaper of the county in which the petition is filed, for six consecutive weeks before the time fixed for the hearing of said cause; or in case no newspaper be published in the county, then to be published in some newspaper having a general circulation in said county. [54 v. 202, § 2; S. & C. 619.]

Hearing and judgment.

SEC. 206. On the return of the citation served, or the service of notice by publication, as aforesaid, the cause shall be considered ready for hearing, unless for good cause shown by either party the same shall be continued for trial and judgment, as in other cases of continuance, and if no good cause be shown, in defense of the claim of the plaintiff in such petition, it shall be lawful for such probate court to render judgment in favor of such plaintiff, against such executor or administrator, for the amount found to be due to the petitioner, and remaining unpaid, upon the settlement and order of distribution, as aforesaid, with the interest and costs of suit, and to award execution thereon, as in other cases of judgments, which execution shall be served and returned, by the sheriff or other proper officer, in all respects as executions issued from the court of common pleas, and all judgments rendered under this section shall have like liens upon the real estate of the parties as judgments rendered in the common pleas, and governed in all respects by the same rules. [54 v. 202, § 3; S. & C. 619.]

Execution.

Lien.

Probate court may bring in all necessary parties, and determine all questions.

SEC. 207. If the amount coming to any heir, legatee, widow, or other distributee, under such order of distribution, shall be uncertain, or in dispute, depending upon the construction of any devise, bequest, conveyance, contract, or advancement, or upon any other question, the probate judge may hear and determine all such questions necessary to ascertain and fix the amount due the plaintiff in such petition, and, if necessary, to hear and determine, and settle the rights and claims of all the parties interested, as aforesaid, in such order of distribution, and for that purpose the probate court is hereby authorized to cause all the heirs, legatees, or other distributees, parties in interest, to be made parties to said petition, when the same is necessary, by amended or supplemental petition, and service of notice, as is provided in the preceding section of this chapter, and in such case to render judgment and award execution against

such executor or administrator in favor of the parties, respectively, for the amounts, respectively, found due them, with the interest and costs, unless the court should be of opinion the costs should be paid out of the estate ordered to be distributed, or by the parties, in which case such order shall be made respecting the costs as shall seem equitable. [54 v. 202, § 4; S. & C. 619.]

Probate court shall, on motion of either party, send the case to the common pleas.

SEC. 208. In all cases under the sections of this chapter relating to the enforcement of an order of distribution, the probate court before which any proceeding shall be pending shall, on motion of any of the parties to said proceeding, cause the same to be reserved and sent to the court of common pleas of that county for trial and judgment and execution, and in case of such reservation it shall be the duty of the probate judge forthwith to make out a transcript of his proceedings in the cause, so far as he has progressed in the same, which, together with the petition, and all other papers in the cause, shall be forthwith filed with the clerk of the court of common pleas of the county in which the cause is commenced, and said cause shall thereafter be carried on to final judgment and execution in said court of common pleas, in all respects as though the same had been originally commenced there, as a civil action. [54 v. 202, § 5; S. & C. 619.]

Common pleas to have concurrent jurisdiction to enforce order of distribution.

SEC. 209. The court of common pleas shall have concurrent original jurisdiction with the probate court, in all cases provided for in the four sections preceding the next above, and any creditor, legatee, widow, or other distributee, as aforesaid, may bring a civil action in the court of common pleas of the proper county, against such executor or administrator, for his or her share of the estate, upon such settlement and order of distribution, in the same manner as other civil actions, and proceed therein to final judgment and execution, and be governed in all respects as upon other civil actions, and to cause all persons interested in said cause, as heirs, legatees, distributees, or otherwise, to be made parties to any action aforesaid, if it shall be deemed necessary, in order to a full and complete settlement and adjustment of the rights of the parties, in the same manner as other civil actions, with full power and authority to settle and determine the rights of the parties, and render judgment and award execution thereon as in other cases. [54 v. 202, § 6; S. & C. 619.]

Sureties may be made parties to judgment.

SEC. 210. The sureties of every such executor or administrator shall moreover be liable upon the official bond of the executor or administrator against whom any judgment may be rendered under the provisions of the preceding sections, either in the probate court or court of common pleas; and such sureties may be made parties to any such judgment by petition or action to be commenced and prosecuted in the same manner as is above provided for the commencement and prosecuting causes against executors or admin-

istrators, to final judgment and execution: provided, that in all cases in which service of process shall have been made upon such executors or administrators, by publication, as above provided, the surety shall be permitted to make the same defense as the executor or administrator could have made. [54 v. 202, § 7; S. & C. 619.]

But if service be by publication, they may defend.

SEC. 211. Any executor or administrator may maintain a civil action in the court of common pleas against the creditors, legatees, or distributees, or other parties, asking the direction or judgment of the court, in any matter respecting the trust, estate, or property to be administered, and the rights of the parties in interest, in the same manner, and as fully as was formerly entertained in courts of chancery. [54 v. 202, § 8; S. & C. 619.]

Action in common pleas to determine questions of administration.

SEC. 212. Appeals shall be allowed from any final order, judgment, or decree of the probate court to the court of common pleas, by any person against whom any such order, judgment, or decree may be made, or who may be affected thereby, in the same manner as is provided for appeals from the probate court to the common pleas in other cases; appeals shall also be allowed from any order or judgment of the court of common pleas, in like manner, to the district court, in proceedings under the sections herein relating to the enforcement of order of distrubution, by any person against whom any such judgment or order may be rendered, or who may be affected thereby, to the same extent and in the same manner as is provided for appeals from the common pleas in other cases; and bills of exceptions may be taken and allowed upon any decision of the probate court, court of common pleas, or district court, in proceedings in this behalf, as in other cases. [54 v. 202, § 9; S. & C. 619.]

Appeal from probate court; and from common pleas. Bills of exception.

THE ADMINISTRATION BOND: SURETIES IN: SUIT ON: AND OTHER MATTERS RELATING TO THE SAME.

SEC. 213. Any surety of any executor or administrator, or the executor or administrator of any such surety, may, at any time, make application to the proper probate court to be released from the bond of such executor or administrator, by filing his written request therefor with the judge of said court, and giving at least five days' notice, in writing, to such executor or administrator; and if such court upon the hearing is of opinion there is good reason therefor, the court shall release such surety, and the death of a surety shall always be deemed good cause; and if such executor or administrator fail to give new bond, as by such court directed, he shall be removed, and his letters superseded; but such original surety shall not be released until such executor or administrator so gives bond, and such original surety shall be liable only for the acts of such executor or administrator from the time of the execution of the original bond to the filing of the second bond; and the costs of such proceeding

How sureties of executor or administrator may be released.

shall be paid by the surety applying to be released, unless it shall appear to the court that the administrator or executor is insolvent, incompetent, or is wasting the assets of the estate. [58 v. 46, § 1; S. & S. 358.]

When new bond may be required.

SEC. 214. Whenever the sureties in any bond of an executor or administrator shall be insufficient, the court, on the petition of any person interested, and after notice to the principal in the bond, may require a new bond to be given, with two or more sufficient sureties. [38 v. 146, § 196; S. & C. 566.]

When and how surety on bond may be discharged.

SEC. 215. Any surety in the bond of an executor or administrator may, at any time after the expiration of six years from the date of the bond, upon his petition, be discharged from all further responsibility upon such bond, if the court, after due notice to all persons interested, shall think it reasonable and proper to discharge him; and the principal shall thereupon give a new bond, with two or more sufficient sureties. [38 v. 146, § 197; S. & C. 566.]

Liability of prior sureties.

SEC. 216. When a new bond shall be required as above provided, the sureties in the prior bond shall, nevertheless, be liable for all breaches of the condition, committed before the new bond shall be approved by the court. [38 v. 146, § 198; S. & C. 566.]

If bond not given, may be removed from trust.

SEC. 217. If, in the cases specified in the three preceding sections, the principal shall not give such new bond, within such time as shall be ordered by the court, he shall be removed from his trust, and some other person may be appointed in his stead, as the circumstances of the case may require. [38 v. 146, § 199; S. & C. 566.]

When executor or administrator to give bond of indemnity to surety.

SEC. 218. If any executor or administrator shall waste, or unfaithfully administer the estate, the court granting the letters may, if it thinks fit, on the application of any surety in the administration bond, order such executor or administrator to render an account, and to execute to such surety a bond of indemnity, with surety or sureties approved by the court; and upon neglect or refusal to execute such bond of indemnity, within the time ordered by the court, it may remove him, and revoke his letters testamentary, or letters of administration, and appoint another administrator in his place. [38 v. 146, § 200; S. & C. 566.]

When unfaithful administration shall be presumed.

SEC. 219. If an executor or administrator shall unreasonably delay to raise money, by collecting the debts and effects of the deceased, or by selling the real estate, if necessary, and if he can obtain an order therefor, or shall neglect to pay what he has in his hands; and if, in consequence of such delay or neglect, the estate of the deceased shall be taken in execution by any of his creditors, it shall be deemed unfaithful administration in such executor or administrator, and he shall be liable on his administration bond for all damages occasioned thereby. [38 v. 146, § 181; S. & C. 566.]

SEC. 220. After a creditor is entitled by law to the payment of his debt, from the executors or administrators, and

the amount of the claim has either been admitted to be just or allowed by them, or has been ascertained by judgment or award against them, or by an order of distribution, the bond given by them for the discharge of their trust, may be put in suit by such creditor, if the executors or administrators shall neglect, upon demand made by such creditor, to pay such claim. [38 v. 146, § 182; S. & C. 566.]

When creditor may sue on administration bond.

SEC. 221. Such suit may also be brought by a legatee, after he shall be entitled to the payment of his legacy, and by the widow, or other distributee, to recover his or her share of the personal estate, after an order of the court, ascertaining the amount due to him or her, if the executor or administrator shall neglect to pay the same when demanded. [38 v. 146, § 183; S. & C. 566.]

When legatee or distributee may sue thereon.

SEC. 222. When it shall appear to the probate court, on the representation of any person interested in the estate of any deceased testator or intestate, that the executor or administrator has failed to perform his duty, in any other particular than those above specified in the two preceding sections, the court may authorize any creditor, next of kin, legatee, or other person aggrieved by such maladministration, to bring a suit on the bond. [38 v. 146, § 184; S. & C. 566.]

When court may authorize suit to be brought.

SEC. 223. In all actions on any bond of an administrator or executor, for a breach thereof, by not filing his final account at the time required by law, or by order of the court, the defendant may aver and give in evidence any facts tending to show that the said breach did not occur by reason of neglect or unreasonable delay of the administrator or executor to settle the estate or file said account; and if the defendant shall make good his defense, he shall recover of the plaintiff his costs; and in no case brought for such breach shall the plaintiff recover more costs than damages. [44 v. 76, § 1; S. & C. 613.]

Defense, costs, etc., in suit on administration bond for not filing account.

SEC. 224. In all cases when the powers of an executor or administrator cease by death, removal, resignation, or in any other manner, or shall have heretofore so ceased, any succeeding administrator, or co-executor, or co administrator, may maintain an action on the bond of such executor or administrator whose powers have ceased, against any of the obligors thereof, or their legal representatives, for any breach of the conditions of the bond. [52 v. 24, § 1; S. & C. 619.]

When succeeding administrator or co-executor or co-administrator may sue on bond.

SEC. 225. An action on the bond may be brought in the court of common pleas or superior court of the county in which it was given, for the particular relief only to which the plaintiff is entitled, or it may be framed, either in the petition or in any cross-petition filed in the case, with a view to a settlement of all matters for which the principal in the bond is accountable, and any heirs, devisees, legatees, widow, or next of kin, or others, who may be liable on account of assets having come into their hands, or who may otherwise be proper or necessary parties, may be made defendants; and when the action is framed for that purpose

In what courts and how bond may be sued.

Parties and judgments.

and the necessary parties are before the court, the court may adjust and settle the estate in whole or in part, rendering all judgments required, and may award costs as may be deemed proper. [38 v. 146, §§ 185, 186, 187, 188, 189, 190, 191, 192, 193, 194; S. & C. 566.]

In suit on bond, claim allowed to be prima facie evidence only of its justice.

How such claim contested.

SEC. 226. When suit is brought upon the administration bond, by a creditor whose claim has been allowed or admitted by the executor or administrator, such allowance or admission shall be prima facie evidence only of the validity and justice of such claim; and the executor or administrator or other defendants, may, in the suit upon the administration bond, contest the same, and the court may determine, by the verdict of a jury, if either party require it, the amount or justice of the claim; and if neither party require a jury, the court shall, by reference to a master or otherwise, decide upon the claim. [38 v. 146, § 195; S. & C. 566.]

PROCEEDINGS BY CREDITORS AGAINST THE HEIRS, DEVISEES, ETC., OF DECEASED DEBTORS.

Estate of deceased in the hands of heirs, etc., liable for certain debts.

SEC. 227. After the settlement of any estate by an executor or administrator, and after the expiration of the time limited for the commencement of actions against him by the creditors of the deceased, the heirs, next of kin, widow as next of kin, devisees, and legatees of the deceased, shall be liable by action in the common pleas or superior court, in the manner provided in the following sections, for all debts, which could not have been sued for, against the executor or administrator, and for which provision shall not have been made as hereinbefore provided. [38 v. 146, § 232; S. & C. 566.]

Heirs, etc., to contribute to pay claims after settlement of estate, and how.

SEC. 228. Any such creditor whose right of action shall first accrue after the expiration of the time of such limitation, and whose claim shall not have been presented to the court, or if presented shall not have been allowed, as hereinbefore provided, may recover the same against the heirs, widow as next of kin, and next of kin of the deceased, and the devisees and legatees under his will, each one of whom shall be liable to the creditor to an amount not exceeding the value, whether of real or personal estate, that he or she shall have received under the will, or by the distribution of the estate of the deceased: provided, that if by the will of the deceased any part of his estate, or any one or more of the devisees or legatees, shall be made exclusively liable for the debt, in exoneration of the residue of the estate, or of the other devisees or legatees, the provisions of the will shall be complied with in that respect, and the persons and estate so exempt by the will, shall be liable for only so much of the debt, if any, as cannot be recovered from those first chargeable therewith; and, provided further, no such suit shall be maintained unless it be commenced within one year next after the time when the right of action shall first accrue, except the person entitled to bring any action mentioned in

this section be, at the time the cause of action accrued, within the age of twenty-one years if a male, and eighteen years if a female, a married woman, insane, or imprisoned, every such person shall be entitled to bring such action within one year after such disability is removed. [64 v. 57, § 233; S. & S. 354.]

Estate of any heir, etc., liable after his death.

SEC. 229. If any of the said heirs, next of kin, widow, devisees, or legatees, shall die without having paid his or her just proportion of such debt, his or her executors or administrators shall be liable therefor, as for his or her proper debt, to the extent to which he or she would have been liable if living. [38 v. 146, § 234; S. & C. 566.]

Where two or more liable, creditor may proceed against all in one action.

SEC. 230. If, in the case specified in the two preceding sections, there should be more than one person liable for the debt, the creditor shall recover the same by one action against all the persons so liable, or as many of them as are within the reach of process; and the court shall thereupon determine, by the verdict of a jury if either party require it, what sum, if any, is due to the plaintiff; and they shall also decide, according to the equities of the case, how much each of the defendants is liable to pay toward the satisfaction of the debt, and render judgment accordingly. [38 v. 146, § 235; S. & C. 566.]

Case of insolvency, etc., of any heir or devisee.

SEC. 231. If any one of the heirs, devisees, or others who were originally liable for the debt, shall be insolvent, or unable to pay his proportion thereof, or shall be beyond the reach of process, the others shall, nevertheless, be liable to the creditor for the whole amount of his debt: provided, that no one shall be compelled to pay more than the amount received by him from the estate of the deceased. [38 v. 146, § 236; S. & C. 566.]

Amendments allowed, when necessary to add parties.

SEC. 232. No such suit shall be dismissed or debarred for the want of including, as defendants, all the persons who might have been included; but in any stage of the cause the court may award proper process to bring in any other parties, and may allow such amendments as may be necessary to charge them, as defendants, upon such terms as the court shall think reasonable. [38 v. 146, § 237; S. & C. 566.]

Heirs, etc., liable to contribution among themselves.

SEC. 233. If, in consequence of insolvency, absence, or from any other cause, any one of the persons liable for such debt, shall fail to pay his just proportion thereof to the creditor, he shall be liable to indemnify all who shall, by reason of such failure on his part, have paid more than their just proportion of the debt—such indemnity to be recovered by all of them jointly, or in separate actions by any one or more of them, for his or their parts respectively, at their election. [38 v. 146, § 238; S. & C. 566.]

PROCEEDINGS WHEN THE ESTATE OF A DECEASED PERSON IS INSOLVENT.

SEC. 234. When it shall appear to the court, from the representation of an executor or administrator, that the real

When an estate is insolvent, the court may appoint commissioners to audit claims:

and personal estate of the deceased will, probably, be insufficient for the payment of his debts, the court may, if it thinks fit, appoint two or more fit persons to be commissioners to receive and examine all claims of creditors against the estate of the deceased, and return to the court a list of all the claims that shall have been laid before them, with the sum that they shall have allowed on each claim; and the commissioners, before entering on the duties of their office, shall be sworn to the faithful discharge thereof. [38 v. 146, § 201; S. & C. 566.]

Who shall be sworn.

Commissioners to give notice of their meetings.

SEC. 235. The commissioners of insolvency shall appoint convenient times and places for their meetings, to receive and examine the claims of creditors; and shall give notice thereof, by causing notifications to be posted up in some public places in the township in which the deceased last dwelt, or in such other manner as the court aforesaid having regard to situation of the creditors of the estate, may order. [38 v. 146, § 202; S. & C. 566.]

Time allowed for creditors to present and prove their claims.

SEC. 236. The period of six months, after the appointment of the commissioners, shall be allowed to the creditors to present and prove their claims; and the court may allow such further time for this purpose, not to exceed eighteen months from the date of the commission, as they may think necessary, according to the circumstances of the case; and, at the expiration of the time for the proof of debts, the commissioners shall make their written report to the court. [38 v. 146, § 203; S. & C. 566.]

Commissioners to report to court.

Provisions for contingent debts.

SEC. 237. If, at the return of the list of claims against the estate, made out by the commissioners as hereinbefore provided, or made out by the executor or administrator, as hereinafter provided, any person shall be liable as a surety, for the deceased, or shall have any other contingent claim against his estate, which could not be proved as a debt under the commission, upon the presentation and proof thereof before the court, the court shall, in ordering a dividend, leave in the hands of the executor or administrator, a sum sufficient to pay to such contingent creditor, a proportion equal to what shall then be paid to the other creditors. [38 v. 146, § 204; S. & C. 566.]

When such debt becomes absolute, what to be done.

SEC. 238. If, at any time within four years after the date of the administration bond, such contingent debt shall become absolute, it may be allowed by the court, if not disputed by the executor or administrator; and, if disputed, may be proved before the commissioners already appointed, or others to be appointed by the court, in like manner as if presented before the first return of the list of claims against the estate. [38 v. 146, § 205; S. & C. 566.]

Dividend thereon, and of residue.

SEC. 239. Upon the allowance of such claim, the creditor shall be entitled to a dividend thereon, equal to what shall have been paid to the other creditors, so far as the same can be paid without disturbing the former dividend; and if his claim shall not be finally established, or if the dividend due to

him shall not exhaust the assets in the hands of the executor or administrator, the residue of the assets shall be divided among all the creditors who shall have proved their debts. [38 v. 146, § 206; S. & C. 566.]

Persons dissatisfied with decision of commissioners, may appeal to the probate court:

SEC. 240. Any person whose claim shall be disallowed, in whole or in part, by the commissioners, and any executor or administrator who shall be dissatisfied with the allowance of any claim, may appeal from the decision of the commissioners to the probate court; if the creditor appeals he shall, within ten days after the decision, file with the commissioners a bond to the executor or administrator, with surety to be approved by the commissioners, in the sum of one hundred dollars, conditioned to pay all costs that may be adjudged against him on such appeal; the executor or administrator may appeal by giving notice to the commissioners within ten days; and in case of an appeal, the court shall, as soon as practicable, hear and determine the question as to the allowance or disallowance of the claim, and shall adjudge the costs against the party failing on such hearing. [38 v. 146, §§ 207, 208; S. & C. 566.]

How:

Hearing and costs.

How persons shall proceed, who have omitted to appeal.

SEC. 241. Any person whose claim shall be disallowed by the commissioners, and who shall, by accident, mistake, or otherwise, and not by his own neglect, omit to claim or prosecute his appeal, as before provided, may, upon his petition, and notice thereof to the executor or administrator, be allowed by the court to claim and prosecute his appeal in manner aforesaid, upon such terms as the court shall impose, if it shall appear by affidavit that justice requires a further examination of his claim: provided, no such petition shall be sustained, unless it be presented within two years after the return of the commissioners, and within four years after the date of the administration bond, and before final distribution. [38 v. 146, § 209; S. & C. 566.]

Allowance of appeal not to disturb distribution previously made.

SEC. 242. The allowance of such appeal, and the judgment that may follow thereon, shall not disturb any distribution that may have been ordered before notice of the petition, or notice of the intention to present the same, shall have been given to the executor or administrator; but the debts, if any, proved and allowed in the case last mentioned, shall be paid only out of such assets as may remain in or come to the hands of the executor or administrator after payment of the sums due on such prior order of distribution. [38 v. 146, § 210; S. & C. 566.]

Commissioners may examine claimants on oath.

SEC. 243. The commissioners may, when they think it proper, require an oath to be administered to any claimant; and they may thereupon examine him upon all matters relating to his claim; and if he shall refuse to take such oath, or to answer fully to all questions that shall be lawfully put to him, the commissioners may disallow his claim, and on any appeal from the award of the commissioners, the court shall have the like power to examine the claimant on oath, and to disallow his claim, if he shall refuse to take the oath, or to

answer fully upon his examination thereon. [38 v. 146, § 211; S. & C. 566.]

They may administer the oath.

SEC. 244. Any one of the commissioners may administer the said oath to the claimant, and may also administer the oath to all witnesses produced and examined before the commissioners. [38 v. 146, § 212; S. & C. 566.]

Distribution among creditors after commissioners' return.

SEC. 245. After the expiration of thirty days from the return made by the commissioners, the court shall make such an order for the distribution of the effects among the creditors as the case shall require; and if, before making such order, the court shall have notice of an appeal from the commissioners, then made or pending, they may suspend the order until the determination of such appeal, or they may order a distribution among the creditors whose debts are allowed, leaving in the hands of the executor or administrator a sum sufficient to pay the claimant whose demand is disputed, a proportion equal to what shall be paid to the other creditors. [38 v. 146, § 213; S. & C. 566.]

When commissioners not appointed, executor or administrator to act as such.

SEC. 246. If the court shall not think fit to appoint commissioners, as hereinbefore provided, when satisfied that the estate will probably be insolvent, the executor or administrator shall proceed, in the place of such commissioners, to receive and allow, if valid, the claims of creditors against the estate, and return to the court a list of all the claims that shall have been laid before him, with the sum allowed by him on each claim. [38 v. 146, § 214; S. & C. 566.]

Who shall give notice to creditors after insolvency is declared.

SEC. 247. The executor or administrator shall, in such case, immediately after the court shall declare the estate probably insolvent, give notice to creditors of the insolvency of the estate, and to present their claims to him, for allowance, within six months, by causing notifications to be posted up in some public places in the township in which the deceased last dwelt, or in such other manner as the court aforesaid, having regard to the situation of the creditors of the estate, may order. [38 v. 146, § 215; S. & C. 566.]

Form of the notice.

SEC. 248. The notice mentioned in the preceding section may be in substance as follows: On the day of , in the year , the probate court of county declared the estate of , deceased, to be probably insolvent: Creditors are, therefore, required to present their claims against the estate to the undersigned, for allowance, within six months from the time above mentioned, or they will not be entitled to payment. Signed:

_____,

Date: Executors or administrators, etc. [38 v. 146, § 216; S. & C. 566.]

Time allowed in such case for creditors to present their claims.

SEC. 249. The period of six months, after the court shall have declared the estate probably insolvent, shall in such case be allowed the creditors, to present their claims to the executors or administrators; and further time may be allowed therefor, in like manner as when commissioners are appointed to receive and audit claims; and the executor or

administrator, after the expiration of the said period, shall file the list of the claims hereinbefore mentioned. [38 v. 146, § 217; S. & C. 566.]

List of claims to be filed.

Sec. 250. If any claim, so presented to the executor or administrator to be allowed by him, shall be disallowed, in whole or in part, it may be referred to referees, by the agreement of the parties, and in the manner heretofore herein prescribed. [38 v. 146, § 218; S. & C. 566.]

Claim disallowed by executor or administrator, may be submitted to referees.

Sec. 251. If such claim is not referred by the agreement of the parties, the creditor shall commence a suit thereon, within three months after such disallowance, or within three months after the same, or any part thereof, shall have become due, for the recovery thereof; and if no suit is commenced within the time aforesaid, the said claim shall be forever barred. [38 v. 146, § 219; S. & C. 566.]

If not referred, creditors to commence suit or barred.

Sec. 252. In any suit or proceeding upon any claim mentioned in the preceding section, the referees or court, before whom the same shall be tried, may direct such costs to be awarded against the creditor, or against the executor or administrator, personally, or to be paid out of the assets of the estate, as a part of the costs of administration, as shall be just, having reference to the facts that appeared on the trial. [38 v. 146, § 220; S. & C. 566.]

Court or referees to award costs.

Sec. 253 The judgment on the award, or in the suit upon the claim mentioned in the preceding section, shall be rendered in the same manner, and with the same effect, as is provided in the case of an appeal from the award of commissioners. [38 v. 146, § 221; S. & C. 566.]

How judgment to be rendered on disallowed claim.

Sec. 254. The court shall, after the expiration of thirty days from the return by the executors or administrators of the list of debts, make an order of distribution, as provided in the case of the return of the commissioners, except that the court may, if it thinks fit, first hear and determine any exceptions that may be filed by any person interested, against the allowance of any debts which have been allowed by the executor or administrator, and the court may make an order in relation to any suit pending against an executor or administrator, in like manner as is provided when an appeal is had, or pending, before or at the time an order of distribution is required, upon the report of commissioners. [38 v. 146, § 222; S. & C. 566.]

When court to make order of distribution on return of list of debts.

Sec. 255. If the whole assets should not have been distributed upon the first order of distribution, or if further assets should afterward come to the hands of the executor or administrator, the court shall make such further order or orders for the distribution thereof, as the case may require. [38 v. 146, § 223; S. & C. 566.]

When court to make further order of distribution.

Sec. 256. No action shall be brought against an executor or administrator after the estate is represented insolvent, unless it be for a demand that is entitled to a preference, and would not be affected by the insolvency of the estate, or unless the assets should prove more than sufficient to pay

Actions against executor or administrator of insolvent estate.

all the debts allowed by the commissioners, or unless a claim is presented and rejected, or disputed by the executor or administrator, before the estate is represented as insolvent, or unless the suit is brought against the executor or administrator, while acting in the place of commissioners, upon an estate represented to be insolvent, and upon a claim disallowed by such executor or administrator; and if an estate is represented insolvent, whilst an action is pending against an executor or administrator, for any demand that is not entitled to such preference, the action may be discontinued without the payment of costs; or, if the demand is disputed, the action may be tried and determined, and judgment may be rendered thereon, in the same manner and with the same effect as is provided in the case of an appeal from the award of the commissioners; or the action may be continued at the discretion of the court, until it shall appear whether the estate is insolvent, and if it should not prove to be insolvent, the plaintiff may prosecute the action as if no such representation had been made. [38 v. 146, § 224; S. & C 566.]

Certain claims not to be recovered, except, etc.

SEC. 257. Every creditor of an estate that proves to be insolvent, who shall not have presented his claim for allowance, in the manner prescribed herein, shall be forever barred from recovering the same, unless further assets of the deceased shall come to the hands of the executor or administrator, after the order of distribution, in which case, his claim may be proved, allowed, and paid, in the manner and with the limitations herein provided for the case of contingent debts [38 v. 146, § 225; S. & C. 566.]

If a surplus remain after paying the debts allowed, other creditors may claim it.

SEC. 258. If, after the report of the commissioners of insolvency, or of the executor or administrator acting in their place, the assets shall prove to be sufficient to pay all the debts allowed under the commission, or under the report of the executor or administrator, as the case may be, the executor or administrator shall pay the same in full; and if, after such order is made, any other debts shall afterward be recovered against him, he shall be liable therefor only to the extent of the assets then remaining in his hands. [38 v. 146, § 226; S. & C. 566.]

How divided between two or more such creditors.

SEC. 259. If there be two or more such creditors, the assets, if not sufficient to pay their demands in full, shall be divided among them, in proportion to the amount of their respective debts. [38 v. 146, § 227; S. & C. 566.]

Executor or administrator liable only for assets in his hands.

SEC. 260. The executor or administrator shall, in such case, be permitted to prove the amount of the assets in his hands, and thereupon judgment shall be rendered in the usual form; but execution shall not issue for more than the amount of such assets; and if there is more than one judgment, the court shall apportion the amount between them. [38 v. 146, § 228; S. & C. 566.]

SEC. 261. If it shall not be ascertained, at the end of three years after the granting of letters testamentary, or of ad-

ministration, whether any estate that has been represented insolvent, is, or is not so in fact, any creditor whose claim shall not have been presented before the commissioners, or to the executor or administrator who may be acting in the place of commissioners, may commence an action therefor, against the executor or administrator; and such action may be continued for the defendant, until it shall appear whether the estate is insolvent; and if it should not prove to be so, the plaintiff may prosecute his action as if no such representation had been made. [38 v. 146, § 229; S. & C. 566.]

Creditor may sue after three years, in case, etc.

SEC. 262. If any executor or administrator shall neglect to render and settle his accounts in court, within six months after the return made by the commissioners, or by the executor or administrator, in their place, or after the final liquidation of the demands of the creditors, or within such further time as the court may allow to collect the debts and assets, so as to delay an order of distribution, he may be compelled to render such account, in the manner hereinbefore directed, to compel the return of an inventory; and the same proceedings may be had to attach him, and to discharge him, and the like revocation of the letters granted to him may be made in case of the party's absconding or concealing himself, so that no order can be personally served, or of his neglecting to render an account within thirty days after being committed; and new letters shall be granted with the like effect, and like remedies on the administration bond, as in those cases. [38 v. 146, § 230; S. & C. 566.]

When and how executor or administrator may be compelled to render his account to court.

SEC. 263. The court shall allow the commissioners such compensation as [it] they may deem reasonable, for their services, which shall be paid by the executor or administrator, as a part of the costs of administration. [38 v. 146, § 231; S. & C. 566.]

Compensation of commissioners.

CHAPTER 8.

GUARDIANS AND TRUSTEES.

GUARDIANS OF MINORS.

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OF MINORS.

Probate court to appoint guardians.

SECTION 1. The probate court in each county shall, when necessary, appoint guardians of minors resident in such county. [55 v. 54, § 1; S. & C. 670.]

Guardian of the estate only:

SEC. 2. A guardian may be appointed to take charge only of the estate of a minor; and at the time of, or subsequent to, the appointment of such guardian to any minor having neither father nor mother, or whose father and mother are both unsuitable persons to have the custody and tuition of such minor, or whose interests will, for any other cause, in the opinion of the court, be promoted thereby, the court may also appoint a guardian to have the custody and provide for the maintenance and education of such minor: provided, however, that if the powers of the person appointed guardian be not limited by the order of appointment, the person so appointed shall be guardian both of the person and estate of the ward; and the court shall in every instance appoint a guardian both of the person and estate of the ward, unless the interests of the minor will, in the opinion of the court, be promoted by the appointment of separate guardians, as hereinafter [hereinbefore] prescribed. [55 v. 54, § 2; S. & C. 670.]

Of the person, etc.:

Of both person and estate, etc.:

Who ineligible as guardian.

SEC. 3. No person who may have been, or shall be, an administrator on an estate, or executor of a last will and testament, shall be appointed a guardian of the person and estate, or of the estate only, of any minor who shall be in-

terested in the estate administered upon, or who shall be entitled to any interest under or by virtue of such last will and testament; but an executor or administrator may be appointed a guardian of the person only of any minor. [55 v. 54, § 3; S. & C. 670.]

When, etc., minors may choose: or court may appoint.

SEC. 4. Any male infant over the age of fourteen years, or a female infant over the age of twelve years, shall have the right to select a guardian, who, if a suitable person, shall be appointed; but if such minor shall fail to select a suitable person, an appointment may be made without reference to the wishes of such minor: A minor shall not, in any instance, have the right to select one person to be the guardian of his or her estate only and another person to be guardian of his or her person only, unless the court having the power of appointment shall be of opinion that the interests of such minor will be promoted by the choice and appointment of such separate guardians, instead of one guardian, both of the person and estate. [55 v. 54, § 4; S. & C. 670.]

How long powers of guardian continue.

SEC. 5. When a guardian has been appointed for any minor before he or she shall have attained the age for making a selection, as fixed in the last preceding section, the powers of such guardian shall continue until the ward shall arrive at the age of majority, unless such guardian be sooner removed for good cause, or such ward shall select another suitable guardian: After such selection is made and approved by the court, and the person so selected is duly appointed and qualified, the powers of the guardian previously appointed shall cease, and thereupon the final account of such guardian shall be filed and settled in the proper court. [55 v. 54, § 5; S. & C. 670.]

His settlement.

Application for appointment for person and estate or estate only.

SEC. 6. Before any person shall be appointed guardian of the person and estate, or of the estate only, of any minor, he shall file in the office of the court having such appointment to make, a statement of the whole estate of said minor, and the probable value thereof, and also the probable annual rents of such minor's real estate, and shall verify the same by affidavit, and shall give bond, with freehold sureties, resident of the state, one of whom shall be resident of the county where such guardian is appointed, payable to the state, in double the amount of the personal estate belonging to said minor, and also of the gross amount of rents that will be probably received by the guardian from the real estate of said minor during his or her minority: provided, that in lieu of freehold surety, such person may execute to said minor a mortgage upon good and unincumbered real estate, first furnishing to said probate court an abstract of his title thereto, which shall by affidavits duly filed be shown to be in value, exclusive of all improvements thereon, sufficient to secure said bond to the satisfaction of said probate court, which mortgage shall be duly recorded in the county in which such real estate is situate, and filed with

His bond.

such probate court; which bond shall be conditioned for the faithful discharge of the duties of said person as such guardian, and shall be approved by the court making such appointment; and such person shall also take an oath that he will faithfully and honestly discharge the duties devolving upon him as such guardian. [55 v. 54, § 6; S. & C. 670.]

His oath.

Bond of guardian of person, etc.

SEC. 7. Before a person is appointed guardian to have the custody, maintenance, and tuition of a minor, without the right to take charge of the estate of such minor, he shall give bond in double the probable expenses of maintaining and educating such minor during one year: in all other respects his bond shall be the same as if he had charge of the estate of his ward, and he shall take the same oath as is prescribed in the preceding section. [55 v. 54, § 7; S. & C. 670]

His oath.

Exceptions to bond:

SEC. 8. Exceptions may be filed in the proper court, by any person on behalf of any minor for whom a guardian has been or may be appointed, to the bond of such guardian, as to the sufficiency of the amount of the penalty thereof, or the sureties therein; whereupon notice shall be given to such guardian to appear before said court within a reasonable time, not exceeding ten days, and show cause against the allowance of the exceptions; and upon the hearing of such exceptions, the court may dismiss the same, or require such guardian to find additional sureties or security in a larger amount, or make such other order as the case may require; and it shall be the duty of the court by which any guardian is appointed, to require, of its own motion, such guardian to give additional bond whenever, in the opinion of said court, the interests of the ward of such guardian shall demand the same. [55 v. 54, § 8; S. & C. 670]

Additional bond.

No bond invalid for informality.

SEC. 9. No bond executed by a guardian shall be void, or held invalid on account of any informality in the same, nor on account of any informality or illegality in the appointment of such guardian; but such bond shall have the same force and effect as if such appointment had been legally made and such bond executed in proper form. [55 v. 54, § 9; S. & C. 670.

One bond for two or more wards; and fees in such cases.

SEC. 10. When the same person shall be appointed guardian of several minors, being children of the same parentage and inheriting from the same estate, separate bonds shall not be required; and in such cases only one application shall be required, and the letters of guardianship to be issued to such guardian by the court shall be in one copy, and not one for each minor; and the court approving and recording such bond, and issuing such letters, shall charge such fees as are allowed by law for such services, to be charged but once, and not once for each ward of such guardian. [63 v. 43, § 10; S. & S. 381.

Powers of guardian of person and estate.

SEC. 11. Every person appointed guardian both of the person and estate of a minor, shall have the custody and tuition of his ward, and the management of such ward's estate dur-

ing minority, unless sooner removed or discharged from such trust, or the guardianship shall sooner determine from any of the causes specified in this chapter: provided, that the father of such minor, or if there be no father, the mother, if suitable person, respectively, shall have the custody of the person and the control of the education of such minor. [55 v. 54, § 11; S. & C. 670.]

Rights of parents.

Effect of marriage of female ward.

SEC. 12. The marriage of a ward, if a female, shall determine the guardianship as to the person, but not as to the estate of such ward. [55 v. 54, § 12; S. & C. 670.]

A parent may, by will, appoint a guardian for minor children.

SEC. 13. Any father, or in case the father be dead or have gone to parts unknown, any mother may, by last will in writing, appoint a guardian or guardians, for any of his or her children, whether born at the time of making the will, or afterward, to continue during the minority of the child, or for a less time. [50 v. 297, § 72; S. & C. 1615.]

Testamentary guardian to have preference, etc.: His duties, powers, and liabilities.

SEC. 14. When a guardian has been appointed by will, by a father or mother of any child, such guardian shall be entitled to preference in appointments over all others, without reference to his place of residence, or the choice of such minor, but his appointment, duties, powers, and liabilities shall in all other respects be governed by the law regulating guardians not appointed by will, except as otherwise specially provided. [55 v. 54, § 13; S. & C. 670.]

When such guardian shall give bond, etc.

SEC. 15. Every such testamentary guardian shall give bond, in like manner and with like conditions, as is required of a guardian appointed by the probate court: provided, that when the testator, in the will appointing the guardian, shall have ordered or requested that such bond should not be given, the bond shall not be required, unless, from a change in the situation or circumstances of the guardian, or for other sufficient cause, the court of probate shall think proper to require it. [50 v. 297, § 73; S. & C. 1615.]

Duties of guardians of person and estate.

SEC. 16. The following shall be the duties of every guardian of any minor who may be appointed to have the custody of such minor and take charge of the estate of such minor, to wit:

First—To make out and file within three months after his appointment, a full inventory, verified by oath, of the real and personal estate of his ward, with the value of the same, and the value of the yearly rent of the real estate; and failing so to do for thirty days after he shall have been notified of the expiration of the time by the probate judge, said probate judge shall remove him, and appoint a successor.

Second—To manage the estate for the best interests of his ward.

Third—To render on oath to the proper court an account of the receipts and expenditures of such guardian, verified by vouchers or proof, once in every two years, or oftener, upon the order of the court, made upon motion of any person interested in said ward or the property of such ward, for good cause shown by affidavit, and failing so to do for thirty

days after he shall have been notified of the expiration of the time by the probate judge, he shall receive no allowance for services, unless the court shall enter upon its journal that such delay was necessary and reasonable: provided, that in all cases where the whole estate of said ward or of several wards jointly, under the same appointment of guardianship, shall not exceed two hundred dollars in value, said guardian shall only be required to render such account upon the termination of said guardianship, or upon the order of said court, made upon its own motion or the motion of some person interested in said ward or wards, or in his, her, or their property, for good cause shown, and set forth upon the journal of said court.

Fourth—At the expiration of his trust, fully to account for and pay over to the proper person all of the estate of his ward remaining in his hands.

Fifth—To pay all just debts due from such ward, out of the estate in his hands, and collect all debts due such ward, and in case of doubtful debts to compound the same, and appear for and defend, or cause to be defended, all suits against such ward.

Sixth—When any ward has no father or mother, or having a father or mother, and such parent is unable or fails to educate such ward, it shall be the duty of his guardian to provide for him such education as the amount of his estate may justify.

Seventh—To loan or invest the money of his ward within a reasonable time after he receives it, in notes or bonds secured by first mortgage on real estate of at least double the value of the money loaned or invested, exclusive of improvements, timber, or minerals subject to destruction, or exhaustion; in bonds of the United States or of any state on which default has never been made in the payment of interest, or bonds of any county or city in this state issued in conformity to law; or, with the consent and approbation of the probate court, in productive real estate within this state, the title to which shall be taken in the name of the guardian as such; and to manage such investments, and when deemed proper change the same into any other investments of the above classes; but no real estate so purchased shall be sold by the guardian except with the consent and approbation of the probate court; and if said guardian fail to loan or invest the money of his ward within such reasonable time, he shall account on settlement for such money and interest thereon, calculated with annual rests.

Eighth—To obey and perform all the orders and judgments of the proper courts touching the guardianship. [69 v. 55, § 14.]

Duties of guardian of estate only.

SEC. 17. When a guardian is appointed to take charge only of the estate of a minor, his duties shall be the same as those specified in the preceding section, except that he shall not be required to perform the sixth duty therein mentioned

when a guardian of the person of such minor has been appointed. [55 v. 54, § 15; S. & C. 670.]

Of the person, etc.

SEC. 18. When a guardian is appointed to have the custody, maintenance, and education of a minor, his duties shall be as follows: First—To protect and control the person of his ward. Second—To provide a suitable maintenance for his ward, when necessary, which shall be paid out of the estate of such ward in the hands of the guardian of such estate, upon the order of the guardian of the person of such ward. Third—When such ward has no father or mother, or having a father or mother, and such parent is unable or fails to maintain or educate such ward, it shall be the duty of the guardian so appointed to provide for him such maintenance and education as the amount of his estate may justify, which shall be paid out of the estate of such ward in the hands of the guardian of such estate, upon the order of the guardian of the person of such ward. Fourth—To obey and perform all the orders and judgments of the proper court touching the guardianship. [55 v. 54, § 16; S. & C. 670.]

Guardian may be removed:

SEC. 19. The probate court may at any time remove any guardian, he having thirty days' notice thereof, for habitual drunkenness, neglect of his duties, incompetency, fraudulent conduct, removal from the county, or any other cause which, in the opinion of such court, renders it for the interest of the ward that such guardian be removed; the removal from the state of any person who has been heretofore or who may be hereafter appointed guardian, shall of itself determine the guardianship of such person. [55 v. 54, § 17; S. & C. 670.]

Effect of guardian removing from the state.

How surety of guardian released:

SEC. 20. Any surety of a guardian may, at any time, apply to the proper probate court to be released from his bond of such guardian, by filing his request therefor with the judge of such court, and giving ten days' notice to such guardian, when application will be made to such court to release such surety; and if such guardian fail to give new bond, as by such court directed, he shall be removed and his letters superseded, but such original surety shall not be released until such guardian so gives bonds, and such original surety shall be liable only for the acts of such guardian from the time of the execution of the original bond to the filing and approval by the court of such new bond. [55 v. 54, § 18; S. & C. 670.]

Extent of his liability.

Resignation of guardian, etc.

SEC. 21. The court by which any guardian has been or may be appointed, may, for reasons satisfactory to such court, accept the resignation of any such guardian and appoint another in his stead. [55 v. 54, § 19; S. & C. 670.]

His duties enforced.

SEC. 22. It shall be the duty of the court by which any guardian has been or may be appointed to enforce the return, at the prescribed times, of all inventories and accounts required to be filed in such court by such guardian, and also to enforce the performance of all other duties devolving upon guardians appointed by such court, either with or without complaint being first made, and thereupon to make and

enter such judgments and orders as may be requisite in any case to promote the faithful and correct discharge of the duties of such guardians, or to preserve the estate of minors for whom such guardians may have been or shall be appointed. [55 v. 54, § 20; S. & C. 670.]

When ward removes from the state and has a foreign guardian appointed, the guardian here may be removed and required to settle.

SEC. 23. When a minor, for whom a guardian has been appointed in this state, shall remove to another state or territory, and a guardian of such infant shall be there appointed, the guardian appointed in this state may be removed, and required to settle his account as hereinafter provided. [55 v. 54, § 17; S. & C. 670.]

When and under what circumstances the guardian here may be removed.

SEC. 24. Such removal shall not be made unless the guardian appointed in another state or territory shall apply to the probate court in this state which made the former appointment, and file therein an exemplification from the record of the court making the foreign appointment, containing all the entries and proceedings in relation to his appointment, and his giving bond, with a copy thereof and of the letters of guardianship, all authenticated as required by the act of congress in that behalf; and before such application shall be heard, or any action taken therein by the court, at least thirty days' written notice shall be served on the guardian appointed in this state, specifying the object of the application and the time when the same will be heard: provided, no such removal shall be made in favor of any foreign guardian, unless at the time of the hearing the state or territory in which he was appointed has made a similar provision as to wards removing from such state or territory; and provided further, that the court may, in any case, deny the application unless satisfied that the removal of the guardian appointed in this state would be [to] the interest of the ward. [65 v. 7, § 2; S. & S. 386.]

What to be done if guardian here removed.

SEC. 25. If the court, on such hearing, remove the guardian, the court may cause all suitable orders to be made discharging the resident guardian, and authorizing the paying over and delivery to the foreign guardian all moneys and other property in the hands of the resident guardian after his settlement. [65 v. 7, § 2; S. & S. 386.]

When foreign guardian of foreign ward may demand or receive property of his ward in this state.

SEC. 26. In any case in which a guardian not appointed in this state and his ward are both non-residents of this state, and the ward is entitled to money or other property in the lawful custody of any executor, administrator, or other person in this state, such guardian may, by the order of the probate court of the proper county, upon filing therein the proofs named in the second preceding section, and giving notice to such custodian as therein prescribed, be permitted to demand, receive, or recover, by suit, such money or other property, and remove the same, unless the terms of limitation attending the right by which the ward owns the same, conflict with such removal. [65 v. 7, § 1; S. & S. 386.]

SEC. 27. The guardian of the person and estate, or of estate only, shall have power, when for the interest of the

The sale of the personal and real estate of minors:

ward, to sell all or any part of the personal estate of the ward, and whenever necessary for the education, support, or payment of just debts of any minor, or for the discharge of any liens on the real estate of such minor, or whenever the real estate of such minor is suffering unavoidable waste, or a better investment of the value thereof can be made, and the court shall be satisfied that a sale thereof will be for the benefit of any minor, the probate court by which a guardian of the person and estate, or of the estate only, has been appointed, may, on the application of such guardian, order the real estate of such minor, or a part thereof, situate in this state, to be sold; and where any person is such guardian for two or more minors whose real estate is owned by them jointly, or in common, the guardian may in one application ask for the sale of the interest of all or any number of his wards in such real estate; and where different persons are guardians of minors so interested jointly, or in common, in the same real estate, such guardians may join in one application; and on the hearing, in either case, the court may authorize the sale of the interest of one or more or of all such wards, as, in its discretion, it may deem right and proper. [56 v. 88, § 22; S. & C. 675: 59 v. 19, § 1; S. & S. 382.]

And in one application guardian may ask for sale of the real estate of two or more wards, and two or more guardians may join.

The petition for sale of real estate; what it shall contain.

SEC. 28. Such application for sale of real estate shall be by petition, which shall set forth, specifically: First—The value and character of all personal estate belonging to such ward that has come to the knowledge or possession of such guardian. Second—The disposition made of such personal estate. Third—The amount and condition of such ward's personal estate, if any, dependent upon the settlement of any decedent's estate, or the execution of any trust. Fourth—The annual value of the real estate of the ward, with a pertinent description of such real estate. Fifth—The amount of rent received, and the application thereof. Sixth—The proposed manner of reinvesting the proceeds of the sale, if asked for that purpose. Seventh—Each item of indebtedness, or the amount and character of the lien, if the sale is prayed for the discharge thereof. Eighth—The age of the ward, where and with whom residing. Ninth—If there be no personal estate belonging to such ward in possession or expectancy, and none has come into the hands of such guardian, and no rents have been received, the fact shall be stated in the petition: If it is desired that the land sought to be sold, or any part thereof shall be laid out in town lots, that fact shall be stated and the reasons therefor, and the manner in which the same is to be laid out. [55 v. 54, § 23; S. & C. 670: 52 v. 76, §§ 1, 2; S. & C. 680.]

Notice of filing, etc.

SEC. 29. Upon such petition being filed, verified by the oath of the guardian, the court shall order the petitioner to give notice to his ward, who shall be defendant to the petition, of the filing and demand thereof, and the time when the same will be heard, in such manner as to the court shall seem reasonable and proper. [55 v. 54, § 24; S. & C. 670.]

Hearing of petition, etc.

SEC. 30. At the time appointed for the hearing of said petition, and being satisfied that the notice named in the last preceding section has been given, and that such real estate ought to be sold, the court shall appoint three freeholders of the county in which said real estate shall be situated, who are not of kin to the petitioner, to appraise said real estate; and if such petition seeks to have the land or any part thereof laid out into town lots, and the court finds that it will be to the advantage of the ward to have the same done, the court shall also authorize the survey and platting of the land for that purpose. [56 v. 88, § 25; S. & C. 676: 52 v. 76, § 2; S. & C. 680.]

Appraisers.

Survey into town lots.

Oath of appraisers.

SEC. 31. Said appraisers shall take an oath to truly and impartially appraise said real estate at the fair cash value, which oath shall be indorsed on the certificate of their appointment, or order of sale issued by the court. [55 v. 54, § 26; S. & C. 670.]

Guardian to execute bond before sale.

SEC. 32. Upon the appraisement of said real estate being filed, signed by said appraisers, the court shall require such guardian to execute a bond, with sufficient freehold sureties, payable to the state in double the appraised value of such real estate, with condition for the faithful discharge of his duties, and the faithful payment, and accounting for, of all moneys arising from such sale according to law. [55 v. 54, § 27; S. & C. 670.]

Order of sale of real estate by the court, and how made.

SEC. 33. Upon such bond being filed and approved by the court, it shall order the sale of such real estate, at auction, for not less than two-thirds of the appraised value thereof, providing in the order for reasonable notice and the place of such sale in the county in which such real estate shall lie; and the credit to be given for the payment of the purchase money, and the deferred payments of the purchase money, shall be secured by a mortgage executed by the purchaser on the real estate sold, and they shall bear interest at the legal rate per annum from the day of sale, payable annually: provided, however, that if it is made to appear to such probate court that it will be more for the interest of said ward to sell such real estate at private sale, it may authorize said guardian to sell the same at private sale, either in whole or in parcels, and upon such terms of payment as may be prescribed by the court; and in no case shall such real estate be sold at private sale for less than the appraised value thereof; and if the petition includes an application for the laying out into town lots of the land to be sold, or any part thereof, and the court approve the survey and plat made for that purpose, the court shall also authorize the guardian, on behalf of his ward, to sign, seal, and acknowledge the plat in that behalf for record according to law. [64 v. 14, § 23; S. & S. 383: 56 v. 88, § 25; S. & C. 676: 52 v. 76, §§ 1, 2; S. & C. 680.]

Private sale, when.

Laying out town lots.

Report of sale, confirmation, and deed.

SEC. 34. Upon the return of the order of sale issued by the court, such guardian shall make report of the sale by him made; whereupon the court, on being satisfied that such sale

was fairly and legally made, shall confirm the same, and order the petitioner to execute a deed of conveyance for the real estate so sold, upon the purchaser securing the deferred payments of the purchase money in the manner prescribed in the last preceding section. [55 v. 54, § 29; S. & C. 670.]

Guardian's compensation.

SEC. 35. Every guardian shall be allowed, by the court settling his account, the amount of all his reasonable expenses incurred in the execution of his trust; and also such compensation for his services as the court shall deem reasonable. [55 v. 54, § 30; S. & C. 670.]

Effect of his settlement with court.

SEC. 36. The settlement made in the probate court of the accounts of a guardian shall be final between him and his ward, unless an appeal be taken therefrom to the court of common pleas in the manner provided by law; saving, however, to any such ward the right of opening and reviewing such settlement, for fraud or manifest mistake, by civil action in the court of common pleas of the county in which such settlement was made, or the county where such guardian may reside when the petition is filed, at the option of the plaintiff in such action, at any time within two years after the said ward shall arrive at full age. [55 v. 54, § 31; S. & C. 670.]

When and how ward may review the settlement.

Foreign minors and guardians; their rights in this state, etc.:

SEC. 37. Minors living out of this state and owning lands within the same shall be entitled to the benefit of this act; and guardians of minors residing out of this state, who have been appointed according to the laws of the state or territory where they may reside, shall have the right to bring and maintain actions and enforce the collection of judgments, rendered in such cases in their favor, in the same manner and to the same extent that they could do if they had been appointed under the laws of this state, upon giving security for the costs which may accrue in such actions, in the same way other non-residents are obliged to do under the laws of this state. All applications for the sale of real estate by guardians of minors who live out of this state shall be made in the county in which the land is situate; or, if situate in more counties than one, then in one of the counties in which a part of such real estate is situate; and additional security shall be required from such guardian or guardians, when deemed necessary, and such as may be approved by the probate court of the county in which such application is made. [55 v. 54, § 32; S. & C. 670.]

Sale of their lands.

Additional security.

Settlement by executors and administrators of guardians.

SEC. 38. When any guardian has died, or may hereafter die, before the settlement in court of his or her guardianship account, it shall be the duty of the executor or administrator of such guardian to settle said account, in the same manner such guardian ought to have done; and any person having an interest in the settlement of such account, or the court by which such guardian was appointed, of its own motion, may by citation to be issued, returned, and proceeded upon according to the provisions of law which may then be in force for the settlement of decedent's estates, compel such

How enforced.

settlement to be made by the administrator or executor of any guardian dying or having died, as aforesaid. The executor or administrator making such settlement shall be allowed such compensation for the same as the court with which the settlement is made shall deem reasonable. [55 v. 54, § 33; S. & C. 670.]

Their compensation.

SEC. 39. When any unmarried woman, who has been or may be appointed guardian of any minor, shall marry, such marriage shall of itself determine the guardianship of such woman; and the probate court of the proper county shall appoint another guardian for such minor, to which last named guardian all the estate of such minor shall, on demand, be delivered up by such former guardian; and she shall forthwith render her guardianship account for final settlement. [56 v. 88, § 34; S. & C. 678.]

Effect of marriage of female guardian.

Her account and settlement.

SEC. 40. The guardian of a female under twelve years of age or a male under fourteen years of age, may, if it be necessary, bind such minor to any suitable person, until such minor shall arrive at the age of twenty-one if a male or eighteen if a female, or for a shorter period; but no such indenture shall be executed unless the probate court appointing such guardian shall first approve such binding and the terms and conditions of the indentures, and evidence such approval by a certificate under the seal of the court indorsed upon the indentures. [56 v. 88, § 5; S. & C. 678.]

Wards may be bound out upon approval by the probate court.

SEC. 41. When any minor has title to any real estate by tax title only, the guardian of such minor may, if he deem it advisable, by deed of release and quit claim convey such minor's interest or title to the person entitled to redeem such real estate, upon receiving from such person the full amount paid for such tax title with the penalty and interest allowed by law in that behalf; and if any such guardian shall tender such deed to the person so entitled to redeem such real estate, and such person shall refuse to accept the same and pay as aforesaid, such person in any proceeding thereafter instituted to redeem or recover such real estate shall not recover costs. [50 v. 265, §§ 1, 2; S. & C. 680.]

Release of ward's tax title by guardian.

Effect of tender to release.

SEC. 42. A guardian of the person and estate, or of the estate only, of any minor may lease the real estate of his ward for any term not exceeding three years and not extending beyond the minority. [69 v. 55, § 14.]

Power of guardian to lease for three years.

SEC. 43. Such guardian may also lease the real estate of his ward for any term not exceeding fifteen years, although such term extend beyond the minority, whenever the court appointing him shall, on his application, find that such lease will be to the advantage of the ward, and is necessary to secure the improvement of the real estate and to increase its rents, and that such increase is needed for the support and education of his ward or to pay his liabilities or any liens on, or claims against his estate, and that by such lease a sale of real estate for these purposes may be prevented. [78 v. 207, §§ 1, 3.]

Power to lease for fifteen years to save property from sale.

Application for power to make long lease for improvement.

SEC. 44. Such application shall be by petition which shall contain a description of the real estate and a particular statement of its value and the value of all other property or effects of the ward, and his income and expenses, a detailed statement of the improvements proposed and the liabilities or expense of support and education to be provided for, the rent of the real estate as it is, and the probable increase of rent if the improvements are made, the means intended to be used in making the improvements and the proposed terms and time of the lease; and such other facts as shall be pertinent to the question whether the authority for making the lease should be granted. [73 v. 207, § 2.]

Who may unite in application and proceedings thereon.

SEC. 45. In such application the guardian may act on behalf of two or more wards, and two or more guardians of different wards may unite, when all the wards are jointly or in common interested in the real estate, and the same rules shall apply as to parties and notice as in application for sale of real estate; and on the hearing the court shall appoint three disinterested freeholders of the county in which the real estate is situate, who are not of kin to the petitioner, to view the premises and report under oath their opinion of the probable cost of the improvements proposed, whether the same and the proposed lease would be for the best interest of the ward or wards, and if so, upon what terms the lease should be made, and the report shall be returned on or before a day named in the order for the final hearing of the case. [73 v. 207, §§ 3, 5, 6.]

Hearing and orders thereon.

SEC. 46. On the final hearing, if the report of the freeholders be in favor of the lease, and the court be of opinion that it will be to the advantage of the ward or wards to improve and lease the real estate, and that such lease is necessary to secure the improvements and increase the rents, and that such increase is needed for the support and education of the ward or wards, or to pay his or their liabilities or liens or other claims against his or their estate, and that by such lease a sale of real estate for any of these purposes may be prevented, the court shall make an order authorizing the lease to be made on such terms and in such manner as the court shall think proper. [73. v. 207, § 4.]

How the improvements may be made.

SEC. 47. In the lease made in pursuance of such order, it may be provided that the improvements shall be made by the tenant as part of the rent, or by the guardian, either out of the rent or other means of the ward or wards, as the court may have directed. [73 v. 207, § 1.]

When such lease extending beyond minority shall determine:

SEC. 48. Any lease made by a guardian to extend beyond the minority shall, nevertheless, determine when the ward, if there be but one, arrives at full age, or if more than one, when all of them arrive at full age, unless such ward or wards then confirm the same; and in case of the death of the ward, if there be but one, or of all of them, if more than one, the lease shall also determine, unless the legal representatives of such ward or wards confirm the same; if there be more

than one ward, and some but not all die, the lease shall continue till the survivor or survivors reach full age; and when such lease is determined by reason of the death or majority of the ward or wards, the tenant shall have a lien on the premises for any sum or sums expended by him in pursuance of the lease in making improvements and for which compensation shall not have been made, either by the rent or otherwise. [73 v. 207, § 1.]

Lien of tenant for improvements.

OF LUNATICS, IDIOTS, AND IMBECILES.

Guardian for idiot, imbecile, and lunatic:

SEC. 49. The probate court, upon satisfactory proof that any person resident of the county, or having a legal settlement in any township thereof, is an idiot, imbecile, or lunatic, shall appoint a guardian for such person, which guardian shall, by virtue of such appointment, be the guardian of the minor children of his ward, unless the court shall appoint some other person as their guardian; an imbecile shall, in this chapter, be understood to mean a person who, not born idiotic, has become so. [53 v. 81, §§ 41, 43, 44; S. & C. 840: 69 v. 174, § 1: 36 v. 40, § 17; S. & C. 679.]

Who is an imbecile.

When wife may be appointed guardian:

SEC. 50. When any person having a wife shall be declared to be an idiot, imbecile, or lunatic, it shall be lawful for the probate judge to appoint the wife of such person his guardian, if it be made to appear to the satisfaction of the judge that she is competent to discharge the duties of such appointment, and any married woman appointed such guardian shall, in her said capacity, have power to enter into official bonds, and she and her sureties thereon shall be liable in the same manner, and to the same extent as though said bond was executed by a feme sole. [53 v. 81, § 42; S. & C. 840.]

Her and her sureties' liability.

Laws applicable to guardians of lunatics, idiots, imbeciles, and their children:

SEC. 51. All laws relating to guardians for minors and their wards, and all laws pointing out the duties, rights, and liabilities of such guardians and their sureties, in force for the time being, shall be applicable to guardians for idiots, imbeciles, and lunatics, and their children, except as otherwise specially provided; but in the settlement of the accounts of such guardians, no voucher shall be received from or allowed as a credit to the guardian of any idiot, imbecile, or lunatic, which shall be signed or purport to be signed by such idiot, imbecile, or lunatic; and provided, that any settlement of the account of any such guardian heretofore made, in which any such receipt shall have been allowed as credit to such guardian, shall be held and deemed absolutely null and void, and any settlement made by any such guardian shall, at any time within two years after the appointment of another guardian, or after the disability of such ward may be removed, or such ward may die, be opened up and reviewed, on the motion of such newly appointed guardian, or legal representative, or of any other interested person, notice of which motion shall be given by publication or

Settlement of such guardians.

otherwise, as the probate judge may direct. [65 v. 206, § 45; S. & S. 435.]

Suits by guardian of idiot, imbecile, or lunatic, and revivor of same.

SEC. 52. Such guardian may sue in his own name, describing himself as guardian of the ward for whom he sues, and when his guardianship shall cease, by his death, removal, or otherwise, or by the decease of his ward, any suit, action, or proceeding then pending shall not abate, if the right survive, but his successor as guardian, or such idiot, imbecile, or lunatic, if he be restored to his reason, or the executor or administrator of such idiot, imbecile, or lunatic, as the case may require, shall be made party to the suit or other proceeding, in like manner as is or may be provided by law for making an executor or administrator party to a suit or proceeding of a like kind, where the plaintiff dies during its pendency. [53 v. 81, § 46; S. & C. 840.]

Sale of real estate by guardian of idiot, imbecile, or lunatic:

SEC. 53. Whenever the sale of the real estate of such ward is necessary for his support, or the support of his family, or the payment of his debts, or such sale will be for the interest of such ward, or his children, the guardian may sell the same under like proceedings as are or may be required by law to authorize the sale of real estate by the guardian of a minor, or if it be more for the interest of such idiot, imbecile, or lunatic, or his children, the probate court, upon the petition of the guardian, may authorize him to sell said real estate at private sale, either in whole or in parcels, and upon such terms of payment as shall be prescribed by the court: Said petition shall contain a pertinent description of the real estate proposed to be sold, a statement of its value as nearly as can be ascertained, and the facts on which the application is founded, and if upon hearing, the court shall be satisfied that it will be more for the interest of the ward, that said real estate should be sold at private than at public sale, the court may make an order authorizing said sale, and prescribing the terms thereof, first taking from said guardian a sufficient bond for the faithful performance of his duty in the premises, and for accounting for the proceeds of all sales made under said order: provided, however, that the guardian shall not be authorized to sell the real estate at private sale for less than its full appraised value; and if the ward have a wife she shall be made a defendant to the petition, and if she file her answer consenting to the sale free and discharged of all right and expectancy of dower therein, such answer shall, on the sale being confirmed, be a full release of her expectancy of dower, and unless in such answer she waive any allowance in lieu of dower, the court shall allow her out of the proceeds of the sale such sum in money as is the just and reasonable value of her expectancy of dower. [60 v. 76, § 47; S. & S. 436: 59 v. 55, § 1; S. & S. 438.]

When wife a party; her expectancy of dower.

SEC. 54. The guardian of any idiotic, imbecile, or insane widow, who has or is supposed to have a right of dower in any lands or tenements, of which her husband was seized as

an estate of inheritance, or in any land held by bond, article, or other evidence of claim, where the dower has not been assigned, shall have power to sell, compromise, or adjust the same upon such terms as he shall deem for the interest of such widow, and as the probate court of the county in which the guardian was appointed shall approve; and after such approval, the guardian may execute and deliver all needful deeds, releases, and agreements for the sale, compromise, or assignment of such dower. [62 v. 102, §§ 1, 2, 3; S. & S. 441.]

Dower of insane, idiotic, or imbecile widow; how assigned or sold by guardian.

SEC. 55. Such guardian may also, in like manner as the guardian of a minor, and on like proceedings, be authorized to lease and improve the real estate of his ward; and if the lease extend beyond the time of the restoration of such ward to sound mind, or his death, such lease shall determine on his restoration or death, unless the same be confirmed by such ward or his legal representatives; but if such lease determine by reason of the restoration of the ward or his death, the tenant shall have a lien on the premises for any sum or sums expended by him in pursuance of the lease in making improvements and for which compensation shall not have been made either by the rent or otherwise. [73 v. 207, §§ 1, 2, 3, 4, 5, 6.]

Leasing and improving by guardian.

SEC. 56. Such guardian may also be authorized by the probate court to lease the real estate of his ward or any part thereof for any limited term of years or by perpetual lease, with or without the privilege of purchase, whenever the court on his application shall find that the same is necessary for the support of his ward or the support of his family, or that such leasing will be for the best interests of him or them; but such guardian may lease the real estate of his ward for any term not exceeding three years without any application to the court. [64 v. 48, § 1; S. & S. 437.]

Long lease by guardian may be authorized by court:

Lease for three years without order of court.

SEC. 57. The application for authority to make such long lease or leases shall be by petition, setting forth the character of the idiocy, imbecility, or lunacy of the ward, whether curable or incurable, temporary or confirmed, and its duration, the number, names, ages, and residence of the family of the ward, including the wife or husband of the ward, and of those who have the next estate of inheritance from said ward, all of whom as well as the ward shall be made defendants; and the petition shall also contain a description of the real estate, its value, and the amount for which it can probably be leased, the reasons for the proposed lease, and the terms, covenants, conditions, and stipulations on which it is proposed to lease the same. [64 v. 48, §§ 1, 2, 3; S. & S. 437.]

Application for authority to make long lease.

SEC. 58. On filing the petition, the same proceedings shall be had as on petition for sale of the real estate of a minor, except that the appraisers shall appraise not only the value of the real estate, but also the value of its annual rent upon the terms, covenants, conditions, and stipulations of the lease as proposed in the petition; and the appraisers shall also state in their report their opinion whether the

Proceedings on the application.

proposed lease will be to the interests of the ward and his family, and they may also suggest any change in the terms, covenants, conditions, and stipulations proposed in the petition; and on the return of the appraisement, the guardian shall not be required to give an additional bond, but in case of sale under the terms of the lease, he shall be required to give such bond before the confirmation of the sale. [64 v. 48, §§ 1, 2; S. & S. 437.]

Final hearing and orders.

SEC. 59. Upon the final hearing, if the prayer of the petition be granted, the court may prescribe the terms, covenants, conditions, and stipulations of the lease, either in accordance with those set forth in the petition or otherwise, and authorize the lease to be made by public or private letting, as may be deemed best; but in no case shall the leasing be allowed for a less rent than that named in the report of the appraisers, and the lease shall not take effect till the same, with the security therein, is approved and confirmed. [64 v. 48, §§ 2, 3; S. & S. 437.]

Completion of real estate contracts:

SEC. 60. The guardian of an idiot, imbecile, or lunatic, whether appointed by a court in this state or elsewhere, may complete the real contracts of his ward, or any authorized contract of a guardian who has died or been removed, in like manner and by like proceedings as the real contract of a decedent may, under an order of court, be specifically performed by his executor or administrator; but in all cases when the guardian, by virtue of such contract or the completion thereof, shall receive or be entitled to receive any moneys not amply covered by his bond, the court shall require of him an additional bond, with sureties, in respect of such moneys. [60 v. 76, § 48; S. & S. 436.]

Additional bond.

Insolvency of lunatic.

SEC. 61. If the estate of the idiot, imbecile, or lunatic is insolvent, or will probably be insolvent, the same shall be settled by the guardian in like manner, and like proceedings may be had as is or may be required by law for the settlement of the insolvent estate of a deceased person. [53 v. 81, § 49; S. & C. 840.]

Foreign guardian of foreign idiot, imbecile, or lunatic may dispose of property belonging to his ward.

SEC. 62. The foreign guardian (conservator, trustee, or other person having power similar to those of guardians in this state), of a foreign idiot, imbecile, or lunatic, appointed in any other state of the United States, or any territory thereof, may possess, manage, or dispose of the real and personal estate of his ward, situate in this state, in like manner and with like authority as guardians of idiots, imbeciles, or lunatics appointed by the courts of this state, after complying with the following requirements: First—An authenticated copy of the foreign commission of idiocy or lunacy proved, allowed, and recorded in the probate court of the county or one of the counties in which such estate is situate, in like manner as is or may be provided by law for the admission to record of an authenticated copy of a will made in any other of the United States. Second—Evidence satisfactory to the court here, before which such foreign commission is approved,

that such idiocy or lunacy still continues. Third—The foreign guardian, conservator, trustee, or other person, having powers similar to those of guardians in this state, shall file his bond, with sureties, residing in this state or elsewhere, to the acceptance of the court, conditioned for the faithful administration of his guardianship. [62 v. 43, § 50; S. & S. 437.]

Termination of guardianship.

SEC. 63. Whenever the probate judge shall be satisfied that an idiot, imbecile, or lunatic, or a person as to whom guardianship has been granted as such, is restored to reason, or that letters of guardianship have been improperly issued, he shall make an entry upon the journal that said guardianship terminate; and the guardianship shall thereupon cease, and the accounts of the guardian shall be settled by the court. [53 v. 81, § 51; S. & C. 840.]

OF DRUNKARDS.

When guardian to be appointed for drunkard.

SEC. 64. The probate court upon satisfactory proof that any person resident of the county wherein the application may be made, is incapable of taking care of and preserving his or her property, by reason of intemperance or habitual drunkenness, shall forthwith appoint a guardian of the property of such person, which guardian shall, by virtue of such appointment, be guardian also of the minor child or children of his ward, in case no other be appointed; and all laws relating to guardians for lunatics, idiots, and imbeciles, and their wards, and all laws pointing out the qualifications, duties, rights, and liabilities of such guardians, and their sureties, in force for the time being, shall be applicable to the guardians contemplated by this act. [68 v. 6, § 1.]

Notice to be served on party, etc.; sale thereafter invalid.

SEC. 65. At least five, but not more than ten, days prior to the time when the application for the appointment of the guardian authorized by the foregoing section shall be made, a notice, in writing, setting forth the time and place of the hearing of the application, shall be served upon the person for whose property such appointment may be sought; and from the time of the service of such notice until the hearing, or the day thereof, as to all persons having notice of such proceeding, no sale, gift, conveyance, or incumbrance, of the property of such intemperate person or habitual drunkard, shall be valid. [68 v. 6, § 2.]

When guardianship shall terminate.

SEC. 66. The court upon reasonable notice to such guardian, and to the person or persons on whose application the appointment was made, and satisfactory proof that the necessity for such guardian no longer exists, shall order that the relation of guardian and ward terminate, and that the ward be restored to the full control of his property, as before the appointment. [68 v. 6, § 3.]

TRUSTEES FOR NON-RESIDENTS.

How trustees are appointed for non-residents.

SEC. 67. When any minor, idiot, lunatic, or imbecile, residing out of this state, has any real estate, goods, chattels, rights, credits, moneys, or effects in this state, the probate court of the county where such property or any part of it may be situate, shall have power, whenever it considers it necessary, to appoint a trustee of such minor, idiot, lunatic, or imbecile, to manage, collect, lease, and take care of such property. [72 v. 161, § 1.]

Jurisdiction.

SEC. 68. The appointment of a trustee, first lawfully made, shall extend to all the property and effects of the minor, idiot, lunatic, or imbecile in this state, and shall exclude the jurisdiction of the probate court of any other county. [72 v. 161, § 2.]

Bond and duties.

SEC. 69. The trustee shall give bond, payable to the state of Ohio, with such sureties and in such sum as shall be approved by the court, not less than double the value of all the property that will probably come into his hands, and shall take upon himself the care and management of the estate and property of such minor, idiot, lunatic, or imbecile, situate in this state, and the collection of debts and other demands due such minor, idiot, lunatic, or imbecile, from persons residing or being in this state, and shall settle with the court, and be liable to suit or removal for neglect or misconduct in the performance of his duties, in like manner as is or may be provided by law in respect to guardians of minors, and as is or may be provided by law for the settlement of the accounts of trustees. [72 v. 161, § 3.]

May lease or sell real estate as guardian of minor appointed in this state.

SEC. 70. The trustee may lease or sell the real estate of such minor, idiot, lunatic, or imbecile, under the same rules and limitations as are now or may be provided by law for the sale of real estate by guardians of minors in this state. [72 v. 161, § 4.]

How long trustee to hold the office.

SEC. 71. The said trustee shall, unless removed by the court, hold his appointment until such minor arrives at the age of majority, whether such minor be under twelve or over fourteen years of age at the time of such appointment, or until the disability of such idiot, lunatic, or imbecile shall be removed, or the minor, idiot, imbecile, or lunatic die. [72 v. 161, § 5.]

When and to whom trustee shall pay over moneys.

SEC. 72. All moneys due to such minor, idiot, lunatic, or imbecile, in the hands of such trustee, shall, during the minority of such minor, or during the disability of such idiot, lunatic, or imbecile, be paid over to the foreign guardian of such minor, idiot, lunatic, or imbecile, so far as necessary or proper for his support and maintenance, or in case of the decease of such minor, or of such idiot, lunatic, or imbecile, to the administrator or other legal representative of such minor, idiot, lunatic, or imbecile: provided, that the court which appointed such trustee shall have satisfactory proof, as hereinafter provided, of the authority of such

guardian, or administrator, or other legal representative, to receive the moneys or estates of such minor, idiot, lunatic, or imbecile, and that the security given by such guardian, or administrator, or other legal representative, is sufficient to protect the interest of such minor, idiot, lunatic, or imbecile, or his or her estate, and shall moreover deem it best for the minor, idiot, lunatic, or imbecile, or his or her estate. [72 v. 161, § 6.]

How foreign guardian, etc., may collect money.

SEC. 73. When any foreign guardian, administrator, or other legal representative of such minor, idiot, lunatic, or imbecile, shall apply to have all or any of the moneys or property in the hands of such trustee paid or delivered over to him, he shall file his petition, or motion, to that effect, in the court by which such trustee was appointed, giving such trustee thirty days' notice of the time of hearing thereon, and he shall also produce an exemplification from under the seal of the office (if there be a seal) of the proper court of the state of his residence, containing all the entries on record in relation to his appointment, giving bond, etc., and authenticated as required by the act of congress in such cases; and upon the hearing thereof, the court shall make such order, as, under all the circumstances, it shall deem for the best interests of such minor, idiot, lunatic, or imbecile, or his or her estate. [72 v. 161, § 7.]

Trustee may loan money in certain case.

SEC. 74. When any money of such minor, idiot, lunatic, or imbecile may be in the hands of such trustee, and not likely to be needed for the support and education of such minor, idiot, lunatic, or imbecile, said trustee shall loan the same in the same manner as guardians by the laws of this state are required to loan the moneys of their wards. [72 v. 161, § 8.]

TRUSTEES GENERALLY, AND THEIR ACCOUNTING.

All trustees must render biennial account.

SEC. 75. Any trustee of any non-resident idiot, imbecile, or lunatic, appointed as aforesaid, and any trustee heretofore or hereafter created by any last will or deed, or appointed by any competent authority, to execute any trust created by any such last will or deed, shall, as often as once each two years, render an account of the execution of his said trust, to the probate court of the county in which he was appointed, or in which such last will or deed may be recorded, in the manner provided by law for the settlement of the accounts of executors and administrators: provided, this section shall not apply in any case in which the will or deed creating such trust designates any other tribunal for the settlement of the trust, or in which any other tribunal shall have acquired jurisdiction. [70 v. 100, § 1.]

Citations and notices.

SEC. 76. The probate court shall issue and have served in the same manner as is or may be provided by law, in the case of the settlement of executors and administrators, the necessary citations and notices by publication or otherwise,

requiring all persons interested, to attend such settlement and make objections thereto, if any they have. [70 v. 100, § 2.]

Probate court to determine as to execution of trust.

SEC. 77. The said court shall have full power to hear and determine all matters relative to the manner in which the trustee has executed his said trust, and as to the correctness of his accounts rendered as aforesaid; and to require any trustee, created as aforesaid within such county, on the determination of his said trust, or on the removal or resignation of such trustee, or in case of the death of the trustee, to require his executor or administrator to render a final account of the manner in which he has executed his said trust, and to hear and determine all matters relating thereto, in the same manner as the accounts of executors and administrators are required by law to be settled. [70 v. 100, § 3.]

Appeal from determination of probate court.

SEC. 78. The determination of the probate court on any such settlement, whether final or intermediate, may be appealed from in the manner provided for an appeal from said court on the settlement of the accounts of executors and administrators, and the like proceedings shall be had on such appeal, and the result of such proceedings on appeal certified back to the probate court. [70 v. 100, § 4.]

Force and effect of the determination.

SEC. 79. The determination of the probate court on any such settlement, shall have the same force and effect as the like determination as to the account of an administrator or executor; and when an account is settled in the absence of any person adversely interested, and without actual notice to him, the account may be opened on his filing exceptions to the account, at any time within eight months thereafter; and upon any settlement of an account by a trustee, all his former accounts may be so far opened as to correct any mistake or error therein, excepting that any matter of dispute between two parties, which had been previously heard and determined by the court, shall not be again brought in question by either of the same parties without leave of the court. [70 v. 100, § 5.]

Allowance of compensation.

SEC. 80. The probate court shall have power to make such allowance as compensation to trustees for their services and expenses in executing their trusts, as the court may deem just and equitable, not exceeding the compensation allowed to guardians for like services; and said judge shall have the same fees as in the settlements of administrators and executors. [70 v. 100, § 6.]

When the court may accept resignation of trustee, or remove him.

SEC. 81. The probate court may accept the resignation of any trustee accounting therein or who has accounted therein or who has been appointed thereby, or may remove any such trustee for any cause for which the guardian of a minor may be removed or because the interests of the trust require his removal.

CHAPTER 4.

INSOLVENT DEBTORS.

Voluntary Assignments.

SECTION
1. Assignee must give bond in probate court: additional bond: when assignment takes effect.
2. On failure to file assignment and give bond, court shall appoint a trustee.
3. Resignation: filling vacancy: additional trustee.
4. Election of trustee by creditors: who to be regarded as creditors for this purpose.
5. Removal of trustee by the court, or on application of surety on failure to give new bond: effect of new bond.
6. Trustee appointed to give bond: his rights on giving bond.
7. Settlement on resignation, removal, or death; paying over to successor and how enforced.
8. Title to be conveyed to trustee.
9. Assignments to prefer one or more creditors, to inure to benefit of all.
10. Also transfers to hinder, delay, or defraud creditors: provided, etc.
11. As to unsettled assignments heretofore made.
12. Notice of appointment.
13. Appraisers, and return of inventory and appraisement, except of land out of the state: and schedule of debts of assignor.
14. Exempt property excepted from the assignment expressly waived, and wife's property: homestead, etc., to be set off by appraisers.
15. Examinations of the assignor or assignee, and orders to prevent fraudulent transfers, etc.
16. Conversion of assets into money.
17. Payment of incumbrances by order of probate court: or action in common pleas for settling same or questions of title.
18. Presentation of claims: their allowance or rejection, and suit on rejected claims, and report thereon.
19. When claim shall be disallowed on application of assignor or creditor, and proceedings in such cases.
20. Affidavit to be filed before allowance of claim, and right of surety, etc., to prove.
21. Preferred claims.
22. Reports and settlements of assignee, declaring and paying dividends.
23. Commissions of assignees and further allowances, counsel fees, etc.
24. Fees of probate judge.

Assignments to Avoid Arrest.

25. Commissioner of insolvents: his appointment, bond, and term.
26. Where office kept and how vacancy filled.
27. Application of person arrested and schedules to be made.
28. Assignment to commissioner and his powers thereunder.
29. Any other transfer of property after arrest, void.
30. Oath of applicant.
31. Examination of applicant to be reduced to writing.
32. Bond required of non-resident, and of resident, unless: and may be required in any case, or may be dispensed with in certain cases whether resident or not.
33. Certificate of commissioner and its effect: where court may require a recognizance.
34. Bond, for what and how sued, and distribution of proceeds.
35. Commissioner to keep record of his proceedings.
36. Notice of application.

bond, or on failure so to do, the court shall remove such assignee or trustee; and upon a new bond being given in accordance with such order and approved by the court, the sureties in the original bond shall be by the order of the court discharged from further liability. [71 v. 73, § 14.]

Trustee appointed, to give bond:

SEC. 6. Whenever the probate court appoints a trustee whether in place of an assignee, or of a trustee before appointed by the court, such trustee shall, within ten days after his appointment, give bond as aforesaid, or, failing so to do, he may be considered as declining the appointment, and the place may be filled by the court; and when a trustee shall have given bond, he shall succeed to all the rights, powers, and privileges of the preceding assignee or trustee; and the court may make and enforce all orders necessary to put the newly appointed trustee into possession of all property, moneys, books, papers, evidences of title, and other effects covered by the assignment, or in any way belonging to the trust; and such trustee may, by suit in the court of common pleas, or otherwise, compel the delivery to him of all such property, moneys, books, papers, evidences of title, and other effects. [71 v. 74, § 2: 71 v. 73, § 14: 73 v. 101, § 4.]

His rights on giving bond.

Settlement on resignation, removal, or death:

SEC. 7. On the resignation or removal of an assignee, or trustee appointed by the court, such assignee or trustee shall forthwith file and settle his account, and on the death of any such assignee or trustee, his legal representative shall forthwith file and settle such account; and immediately after such settlement, such assignee, or trustee, or his legal representative, shall pay over to his successor all moneys found due from him to the trust; and on failure so to do, or on failure to file and settle such account, or deliver over to his successor all property, moneys, books, evidences of title, papers, and other effects in any way belonging to the trust, such successor may, by action in the common pleas or otherwise, proceed on his bond against such assignee, or trustee, or his legal representative and the sureties in such bond. [71 v. 74, § 2: 73 v. 101, § 4.]

And paying over to successor, and how enforced.

Title to be conveyed to trustee.

SEC. 8. Whenever the court appoints a trustee to act in place of the assignee of the debtor, the assignee and the debtor shall forthwith convey to such trustee the title to all the real estate embraced in the assignment. [68 v. 41, § 2.]

Assignments in contemplation of insolvency to inure to benefit of all the creditors.

SEC 9. All assignments in trust to a trustee or trustees, made in contemplation of insolvency, with the intent to prefer one or more creditors, shall inure to the equal benefit of all creditors, in proportion to the amount of their respective claims, and the trusts arising under the same shall be administered in conformity with the provisions of this chapter. [56 v. 231, § 16; S. & C. 709.]

SEC. 10. All transfers, conveyances, or assignments made with intent to hinder, delay, or defraud creditors, shall be declared void at the suit of any creditor; and the probate judge of the proper county, after any such transfer, conveyance, or assignment shall have been declared, by a court of compe-

tent jurisdiction, to have been made, with the intent aforesaid, or with the intent mentioned in the next preceding section, shall on the application of any creditor, appoint a trustee according to the provisions of this chapter, who, upon being duly qualified, shall proceed by due course of law, to recover possession of all property so transferred, conveyed, or assigned, and to administer the same as in other cases of assignments to trustees for the benefit of creditors: provided, however, that any creditor instituting a suit for the purpose aforesaid, shall cause notice of the pendency and object thereof to be published for at least four consecutive weeks in some newspaper printed or of general circulation in the county in which said suit shall be pending; and all creditors who shall, within fifteen days next after the expiration of said notice, file an answer in said action in the nature of a cross-petition, praying to be made parties thereto, and setting forth the nature and amount of their respective claims, and shall secure the payment of their pro rata share of the costs and expenses of such action, including reasonable counsel fees, in proportion to the amount of their said claims, either by a deposit of money, or by an undertaking given to the plaintiff in such sum, and with such security as the court or clerk thereof shall require and approve, shall be first entitled, with the plaintiff, to the benefits of such transfer, conveyance, or assignment, in proportion to the amounts of their respective claims; and in case of such notice being given, the court in which such transfer, conveyance, or assignment shall have been declared to have been made with the intent aforesaid, may proceed fully to administer the trust, both as to the creditors who are parties as aforesaid, and those who have not come in and been so made parties, distributing to the latter the surplus, if any, after satisfying the claims of those who have preference as aforesaid; but if such court shall not so administer the trust, or if such notice shall not have been given, the said court shall forthwith, on declaring the intent aforesaid, cause a copy of the judgment to be certified to the proper probate court, which shall, on its own motion, appoint a trustee as in this chapter provided; and after the costs and expenses aforesaid, and the claims of the aforesaid preferred creditors shall have been paid by such trustee, the residue in his hands, if any, shall inure to the equal benefit of the remaining creditors, in proportion to the amount of their claims. [60 v. 8, § 17; S. & S. 397.]

Transfers, etc., to hinder or defraud, void, and appointment of assignee, etc., in such cases.

SEC. 11. In all cases of assignments heretofore made, where no final settlement and distribution has been made, the probate judge of the proper county shall have the power, on the application of any creditor of the assignor, to issue a citation against such assignee, requiring him to appear before such probate judge, on the day named in such citation, to show cause why he should not give bail for the execution of his trust according to the provisions of this chapter; and such probate judge, on good cause shown, may require such

As to unsettled assignments heretofore made.

assignee to give bail according to the provisions of this chapter; and in case such assignee shall fail to appear as required by such citation, or shall fail to give bail within the time ordered by such probate judge, such probate judge shall remove him and appoint another trustee, and after the giving bail by any assignee, or trustee so appointed, as provided in this section, the same proceedings shall be had as provided in this chapter in case of assignments hereafter made. [56 v. 231, § 21; S. & C. 709.]

Notice of appointment.

SEC. 12. Every assignee, or trustee appointed on the assignee failing to qualify, shall within thirty days after giving bond, cause notice to be given in some newspaper of general circulation in the county, for three successive weeks, of his appointment as such assignee or trustee. [56 v. 231, § 4; S. & C. 709.]

Appointment of appraisers:

SEC. 13. Immediately upon the assignee giving bond, or if the assignee fail to give bond, then upon the trustee appointed by the court giving bond, the court shall appoint three suitable, disinterested persons appraisers of the property and assets of the assignor; and the said assignee or trustee shall, within thirty days after giving bond, unless for good cause shown the court shall allow a longer time, make and file in the court an inventory, verified by his oath, of all the property, moneys, rights, and credits of the assignor included in the assignment, which shall have come to his possession or knowledge, together with an appraisement thereof by said appraisers under their oath: provided, however, that if any part of said estate or effects be in any other county, the assignee or trustee may have appraisers as to such part of the estate and effects, appointed by any disinterested justice of such county; and provided, further, that if the assignment includes real estate situate without this state, it shall not be necessary to have such real estate appraised, but the assignee, or trustee appointed by the court, shall sell such real estate at public or private sale, and the sale shall be confirmed, if the court find that the same has been made in good faith and for a fair price; and at the time of filing the inventory, the assignee or trustee shall also file a schedule of all the debts and liabilities of the assignor within his knowledge, which schedule shall be verified by the oath of the assignee or trustee; which schedule shall contain the post-office address of each of such alleged creditors as far as the same can be given. [56 v. 231, §§ 3, 4; S. & C. 709: 68 v. 41, § 1.]

Return of inventory and appraisement:

When justice may appoint appraisers:

Real estate without the state, assigned for benefit of creditors, need not be appraised, etc.

Also, a schedule of debts of assignor.

Exempt property excepted from assignment unless expressly waived, and wife's property.

SEC. 14. No assignment for the benefit of creditors shall be construed to include or cover any property exempt from levy or sale on execution, or from being by any legal process applied to the payment of debts, unless in the assignment the exemption is expressly waived, or any property belonging to the wife of the assignor, nor to require the assignor to deliver up any of such property; and as to the homestead exemption, and exempt property that has to be selected by

the debtor and his wife, the appraisers appointed by the court shall, on making the appraisement, set the same off in the same way that appraisers of property levied on or attached are required to do; and if, for any reason, this setting off is then omitted, the court may at any time thereafter and before sale, order the same to be done by the appraisers. [58 v. 3, § 15; S. & S. 396]

Homestead, etc.; to be set off by appraisers.

SEC. 15. The probate judge may, on the application of the assignee, or of any creditor, or without any application, at all times require the assignor, upon reasonable notice, to attend and to submit to an examination on oath upon all matters relating to the disposal of his property, to his trade and dealings with others, and his accounts concerning the same, to all debts due or claimed from him, and to all other matters concerning his property and estate, and the due settlement thereof according to law, which examination may, at the request of any party to the proceeding, be reduced to writing; and the said probate judge may, in like manner, at any time before the final settlement of the accounts of the assignee, require the attendance of the assignee, or any other person as a witness, and examine him or her upon oath, as to all matters appertaining to the estate of the assignor or to the administration of the said trust; and the said probate judge may, upon or after such examination, make and enforce any orders upon proper parties, which he may deem necessary to prevent any fraudulent transfer or change in the property or effects of the assignor or the allowance or payment of any unjust or fraudulent claim out of his estate. [69 v. 172, § 12.]

Examination of assignor as to honesty of assignment, etc.

Orders to prevent fraudulent transfer, etc.

SEC. 16. The assignee or trustee shall proceed at once to convert all the assets received by him into money, and to sell the real and personal property assigned, including stocks, and such bonds, notes, and other claims as are not due, and which cannot probably be collected within a reasonable time, either for cash, or upon such other terms as the court may order, at public auction, at such time and place as may be designated in notice given by advertisement in some newspaper of general circulation within the county, for four successive weeks, and of which sale due return shall be made to the judge; but all such sales of real estate shall be made at not less than two-thirds the appraised value thereof, being subject to reappraisement as upon executions at law, and such sale shall be set aside, or confirmed, as the court shall order; and if confirmed, deeds shall be made to the purchasers, conveying the title free from all liens on the same for all debts due by the assignor. Whenever the court shall be satisfied that it would be for the advantage of the creditors of the assignor to sell any part of the real or personal property assigned, at private sale, the court may authorize the assignee or trustee to thus sell the same, either for cash, or upon such other terms as the court may order; but such real estate shall, in no case, be sold for less than

Conversion of assets, etc., into money.

two-thirds its appraised value; nor shall such personal property be sold for less than two-thirds of such appraisement, unless the court shall, upon good cause shown, order the assignee to sell the same for a less amount; and a return of such sale shall be made within the time prescribed by the court; and such sale shall be confirmed by the court before the same shall be complete and binding; and if confirmed, deeds shall be made of the real estate, to the purchasers, conveying the title, free from all liens on the same, for all debts due by the assignor. Should any property, thus ordered to be sold at private sale, be not so sold within the time prescribed by the court, then the court shall order the same to be sold at public auction, in the same manner as though a private sale had not been ordered; and the assignee, or trustee, may with the approval of the court compromise or sell any claim or demand on behalf of the assignor which is desperate, or of difficult collection; and he may, also, with the approval of the probate court, complete and enforce all sales of real estate made by the assignor, making all needful conveyances for that purpose: provided, however, that the limitation as to the price for which real estate shall be sold, shall not apply to real estate situate out of the state. [58 v. 105, § 5; S. & S. 395: 56 v. 231, § 18; S. & C. 709: 68 v. 41, § 1.]

Compromise or sale of claims.

Completing real contracts.

Payment of incumbrances by order of probate court or action in common pleas for settling liens or questions of title.

SEC. 17. The probate court shall order the payment of all incumbrances and liens upon any of the property sold, or rights and credits collected out of the proceeds thereof, according to priority: provided, that the assignee may, in all cases where the real estate to be sold is incumbered with liens, or where any questions in regard to the title require a decree to settle the same, commence a civil action for the sale of such real estate, in the court of common pleas of the proper county, making all persons in interest, parties to such proceedings; and upon hearing, such court shall order a sale of the premises, the payment of incumbrances, and determine the questions involved in regard to the title to the same; and the proceeds of the real estate so sold by order of the court of common pleas, after payment of liens and incumbrances, as ordered by such court, shall be reported to the probate court by the assignee, and disposed of as provided in this chapter. [58 v. 105, § 9; S. & S. 395: 69 v. 71, § 1.]

Presentation of claims; their allowance or rejection, and suit on rejected claims; and report thereon.

SEC. 18. Creditors shall present their claims within six months after the publication of the notice hereinbefore provided for, unless further time is allowed by the court to the assignee or trustee for allowance, and the assignee or trustee shall indorse his allowance or rejection thereon, and claimants whose claims are rejected, shall be required to bring suit against the assignee or trustee, to enforce such claims within thirty days after the same shall have been rejected, in which, if he recover, the judgment shall be against the assignee or trustee, that he allow the same in settlement of his trusts, with or without the costs, as the court shall think

right; and immediately after the expiration of said six months, the assignee or trustee shall file in the court a report of all claims presented to him for allowance, their several amounts, and the date from which, and the rate at which the several claims are entitled to interest, specifying what claims have been allowed, and what ones rejected, with the date of allowance or rejection; and what, if any, claims are held under advisement; and the postoffice address of every creditor whose claim is either allowed or rejected. [57 v. 118, § 6; S. & C. 710]

When claim shall be disallowed on application of assignor or creditor, and proceedings in such case.

SEC. 19. If the assignor or any creditor shall file in the court a written requisition on the assignee or trustee to disallow any claim or claims presented, which he has not reported as disallowed, and shall enter into bond to the assignee or trustee in such amount and with such sureties as the court shall approve, conditioned to pay all the costs and expenses of contesting the same, such claim or claims shall be, by the order of the court, disallowed, although the same may have before been allowed by the assignee or trustee; and the assignee or trustee shall forthwith give written notice of such disallowance to the creditor or creditors, or his or their attorneys, whose claim or claims are so disallowed; and thereupon the same proceedings shall be had as required in other cases of disallowance, by the preceding section. [56 v. 231, § 8; S. & C. 709.]

Affidavit to be filed with claim before allowance or payment; and right of surety to prove.

SEC. 20. Every person presenting and filing a claim against the estate of the debtor, and before the same shall be allowed or any payments made thereon, shall make and file an affidavit setting forth that the said claim is just and lawful, and the consideration thereof, and what, if any, set-offs or counter-claims exist thereto; what collateral or personal security, if any, the claimant holds for the same, or that he has no security whatever, and the assignee, or trustee, or any creditor shall have the right to examine the claimant under oath touching any such collateral or other security, or any other matter relating to said claim, within such time and under such regulations as shall be prescribed by the probate judge; any surety of, or person jointly liable with, the assignor, may be allowed to present and prove the claim on which he is so bound; but the dividend thereon shall be payable to the party holding the claim; and if the latter prove such claim, then the allowance and dividend shall be on the claim, as proved by him, only. [56 v. 231, § 13; S. & C. 709.]

Preferred claims.

SEC. 21. All taxes of every description assessed against the assignor, upon any personal property held by him before his assignment, shall be paid by the assignee or trustee out of the proceeds of the property assigned, in preference to any other claims against the assignor; and every person who shall have performed any labor as an operative in the service of the assignor, shall be entitled to receive out of the trust funds, before the payment of the general creditors, the full

amount of the wages due to such person for such labor, performed within six months preceding the assignment, not exceeding one hundred dollars. [57 v. 39, § 3; S. & C. 716: 58 v. 26, § 1; S. & S. 398.]

Reports and settlements of assignee:

SEC. 22. At the expiration of eight months from the appointment and qualification of the assignee or trustee, and as often thereafter as the court may order, an account shall be filed with said court, by such assignee or trustee, containing a full exhibit of all his doings as such, up to the time of the filing thereof, together with the amount of all claims remaining uncollected and the amount thereof, which in his opinion may thereafter be collected, to which said accounts exceptions may be filed by parties interested, in the same manner that exceptions are or may be filed to the accounts of administrators, executors, or guardians, and such accounts shall be examined, and the exceptions thereto heard by the court, in the manner provided by law for the settlement of the estates of deceased persons; upon the filing of such accounts, the court shall fix a time for the hearing, and publish notice thereof as in the case of the filing of the account of an executor or administrator. Whenever, on settlement, the same shall show a balance remaining in the hands of said assignee or trustee, subject to distribution among the general creditors, a dividend shall be declared by the probate judge, payable out of such balance, equally among all the creditors entitled, in proportion to the amount of their respective claims against the assignor, including those disallowed, as to which the claimant has begun proceedings to establish, the same as hereinbefore required, and claims held under advisement; of the making of which dividend, and of the time and place of payment thereof, notice shall be given by advertisement once, in a newspaper published and of general circulation in the county in which such trust is being administered, and in such other way as the court may order; of the payment of which dividends and those remaining uncalled for and unpaid at that time, report shall be made within sixty days after the day fixed for the payment of the same; the court shall then cause a new notice to be given to the owners of the unpaid dividends, in such way as the court may direct; and if the same are not demanded within twelve months thereafter, the same shall be divided pro rata among the other creditors, until they are paid in full, and the remainder, if any, to the assignor or his legal representatives. The dividends reserved for claims disallowed, or held under advisement, when the proceedings to enforce their allowance have been commenced, as to claims disallowed, shall be held until said proceedings have terminated, when they shall be paid, if the allowance of the claim has been ordered, on the same; otherwise they shall be distributed pro rata among other creditors not paid in full, or refunded to the assignor, as the case may require. [73 v. 146, § 10.]

The declaring and payment of dividends.

Commissions of assignees:

SEC. 23. Before any dividend is declared, the assignee or trustee may be allowed the following commission upon the amount of the personal estate collected and accounted for by them, and of the proceeds of the real estate sold under an order of court for the payment of debts, which shall be received in full compensation of all his ordinary services, that is to say: For the first thousand dollars, at the rate of six per centum: For all above that sum, and not exceeding five thousand dollars, at the rate of four per centum: And for all above five thousand dollars, at the rate of two per centum. And in all cases, such further allowance shall be made as by the court shall be considered just and reasonable for his actual and necessary expenses, and for any extraordinary expenses, and for any extraordinary services not required of an assignee in the common course of his duty, also such reasonable counsel fees as may be necessary for the proper administration of said assignment, whether performed by the assignee or trustee as attorney, or such other as may be employed by him, but that no such further allowance, extraordinary expenses, or services, or attorney fees, shall be allowed by the court unless a bill of items be filed, showing such actual and necessary or extraordinary expenses and services, or attorney fees, together with the affidavit of the person incurring such expenses or performing such services, showing that the same were performed for and were necessary to the assignment, and that the amount charged therefor is reasonable, and not more than is usually paid for such services; and when such services shall have been performed by persons other than the assignee or trustee, the assignee or trustee shall also file an affidavit, stating that such services were necessary for the proper administration of the assignment, that they were performed under his direction, that the charges for the same are fair and reasonable, and that the full amount thereof has been paid to the party performing such services. [71 v. 28, § 11.]

Further allowances; counsel fees, etc.

Fees of probate judge.

SEC. 24. The probate judge shall be entitled to the following fees for services performed under the preceding sections of this chapter: For hearing and deciding each application, two dollars: for appointing or removing any assignee or trustee, one dollar: for filing assignment, inventory, and schedule, each, ten cents: and for filing all other papers, each, five cents; and for all other services, the same compensation as may be provided for like services, in the settlement of the estates of deceased persons. [56 v. 231, § 20; S. & C. 709.]

ASSIGNMENTS TO AVOID ARREST.

Commissioner of insolvents; his appointment, bond, and term.

SEC. 25. The probate court in each county shall appoint a commissioner of insolvents, who shall give bond to the state in a sum fixed by the court, not less than one thousand dollars, and with sureties to be approved by the court, and conditioned for the faithful discharge of his duties, and hold

his office for three years, unless sooner removed by the court. [29 v. 329, §§ 1, 2, 3, 4; S. & C. 696.]

Where office kept, and vacancy, how filled.

SEC. 26. The commissioner shall keep his office at the county seat; and the court appointing him may, at any time, remove him, or accept his resignation, and on a vacancy occurring by death, resignation, removal, expiration of term or otherwise, the court shall appoint a successor, who, upon qualifying, shall be entitled to demand and receive all books, papers, and assets of every kind appertaining to the office, or in the possession of his predecessor, as commissioner, and who shall proceed with the business of the office, as if no change had been made. [29 v. 329, §§ 4, 5, 49, 53; S. & C. 696.]

Application of person arrested, and schedules to be made.

SEC. 27. When any person, whether a resident in this state or not, shall be arrested, or be in custody of any sheriff, or other officer, on mesne or final process, in any civil action, the officer having such person in custody, if requested by him, shall go with such person before the commissioner of insolvents of the county where such person shall be arrested, or in custody; whose duty it shall be, if required, to make out for such person in custody, and under his direction, an accurate schedule in writing of all debts by him owing, specifying the names of the persons to whom owing, and the original consideration thereof, and whether the same are by bond, note, or other contract in writing, or by book account, or otherwise, and also an accurate schedule in writing of all debts and demands owing to him, with a pertinent description of all contracts in which he is in any way interested, and of all property, of every kind, real and personal, in possession, remainder, or reversion, to which he has any claim; and such applicant shall surrender to the commissioner all written evidences of title and of claims and his books of account: provided, however, that nothing herein shall be construed to deprive any person of any right he may have to hold property exempt from the payment of his debts, or to require him to assign or surrender any such property or rights in action to the commissioner; but a separate schedule shall be made of the exempted property, and the commissioner shall decide all questions as to the value of any property selected by the debtor as exempt, and all other questions in that behalf. [29 v. 329, §§ 7, 8, 9, 10, 48; S. & C. 696.]

Assignment of his property:

SEC. 28. Before any person making application as aforesaid, shall be entitled to a certificate from the commissioner, as hereinafter provided, he shall make and deliver to the commissioner an assignment, in writing, of all his property, rights, and credits, of every kind and description, except

Its form:

only exempted property or rights; but no particular form of words shall be necessary to the validity of said assignment;

Its effect:

and the same, when made and delivered to the commissioner, shall operate as a conveyance of all the property of such applicant, and shall vest in the commissioner all the rights,

legal and equitable, which such applicant had in or to any property, rights, and credits, whether the same be mentioned or described in such schedules and inventory, or not, except as aforesaid; and it shall be lawful for the commissioner to commence and prosecute suits and actions in his own name, in the same manner that the applicant could have done before such assignment: provided, that suits pending at the time of such assignment shall not abate, but may be prosecuted and defended, by the commissioner, in the name of the applicant, to final judgment, as though such assignment had not been made. [29 v. 329, § 11; S. & C. 696.]

Suits on his claims, by the commissioner:

Suits pending at the time of the assignment.

SEC. 29. Every assignment, transfer, or conveyance of property, either real, personal, or mixed, made or executed by the applicant after his arrest, and before his examination before the commissioner, as herein provided, shall be utterly void, and of no effect. [29 v. 329, § 12; S. & C. 696.]

Any other transfer of property after the arrest, void.

SEC. 30. When any person shall make application to the commissioner, he shall, at the time of making such application, make and subscribe an oath before the commissioner, in the following form, viz.: I, A. B., do swear that I was not arrested, nor am I now in custody of an officer, at the suit of ———, by any collusion or combination with the said———, or with any other person; that I have delivered up and assigned to the commissioner of insolvents of the county of ———, all the property that I have, or claim any title to, or interest in; that the schedules and inventory of any property, rights, and credits by me made, contain, as far as I know or believe, a full description of all my property, rights, credits, and claims, in possession, remainder, or reversion (property exempted from execution excepted); and also all my bonds, notes, contracts in writing, and other contracts, in which I am beneficially interested, and that I have delivered the same to the commissioner; and also my books of account, and all written evidences of my right or title to any property whatsoever; and that I have not, directly or indirectly, at any time, sold, conveyed, or disposed of, for the use of any person, any money or property, debt, right, or claim, or intrusted the same to or with any person, thereby to defraud my creditors, or any of them, or to secure the same so that I, or my heirs, or any other person, shall receive or expect any profit or advantage therefrom. [29 v. 329, § 15; S. & C. 696.]

Oath of applicant.

SEC. 31. When any person shall apply to the commissioner, as aforesaid, he shall, at the time of making oath, as aforesaid, answer such questions as shall be put to him by the commissioner, or any creditor, his agent, or attorney, relative to his circumstances and the situation of his property, and the causes which occasioned his insolvency; all which questions, together with the answers of the applicant, shall be reduced to writing, and subscribed by him; and such answers shall be considered as made under the oath administered as aforesaid. [29 v. 329, § 16; S. & C. 696.]

Examination of applicant before the commissioner:

To be reduced to writing and subscribed.

Bond required of non-resident:

And of resident, unless:

And may be required in any case:

And in certain cases may dispense with bond, whether resident or not.

SEC. 32. Any applicant who is a non-resident of the state, shall give bond to the commissioner, with surety to his acceptance, in a sum not less than two hundred dollars, conditioned that such applicant shall appear in the probate court of the county on the third Monday thereafter, and that he shall then and there file his petition, and submit to a further examination, pay the costs, and in all respects comply with the requisitions of the court; and a resident applicant shall be required to give a like bond, unless the commissioner is satisfied that the applicant has committed no fraud by disposing of property, and that the application is not made to enable him to remove his body out of the state; and in any case, the commissioner may, in his discretion, require the applicant to give such bond in any sum not exceeding the amount of the debt or demand for which such applicant is in custody; or if, in any case, whether applicant be resident or not, the commissioner is satisfied that the applicant has no property not exempt, and that he has not committed any fraud by disposing of property, and has no intention of removing his body out of the state, he may dispense with the giving of bond. [29 v. 329, §§ 14, 17; S. & C. 696: 42 v. 29, §§ 2, 3; S. & C. 707.]

Certificate of commissioner to the applicant:

And its effect:

SEC. 33. When any person shall apply to the commissioner, and shall have complied with the foregoing provisions, the commissioner shall give to the applicant a certificate of his having so complied; and the certificate of the commissioner shall protect the person of the applicant from arrest or imprisonment, for any debt or demand in any civil action, at the suit of any person named in his schedule, and from any fine or penalty therein named, and for which he has been imprisoned sixty days or more, until the day his application is finally disposed of by the probate court; and if such applicant shall appear in said court, and file his petition, as required, said certificate shall protect such applicant from arrest, as aforesaid, until said petition shall be finally disposed of by the court: provided, that the court may, for sufficient cause shown, require such applicant, when his petition is continued for more than ten days at one continuance, to enter into a recognizance to the state of Ohio, for the benefit of his creditors, with surety, to be approved by the court, conditioned that said petitioner shall appear and prosecute his said petition, and abide the order of the court thereon. [29 v. 329, §§ 20, 21; S. & C. 696: 51 v. 323, § 1; S. & C. 708.]

When the court may require a recognizance, etc., from the applicant.

Bond of applicant, for what and how sued, and distribution of proceeds.

SEC. 34. If any applicant for relief, shall fail to appear in court, and comply with the condition of his bond, the same shall be forfeited, and suit may be brought thereon, in the name of the commissioner, for the use of the creditors of the applicant; and the sum collected therefrom shall be distributed amongst the creditors, as the proceeds of the effects of the applicant are distributed. [29 v. 329, § 19; S. & C. 696.]

Commissioner to keep a record of his proceedings:

Open to inspection.

SEC. 35. The commssioner shall keep a book, in which he shall enter each application made to him under this chapter, and briefly note all the proceedings had before him, in each case, severally; which record shall be open, at all reasonable times, to the inspection of any person interested; said book shall be furnished to the commissioner by the county auditor, on order of the probate court, at the expense of the county. [29 v. 329, § 23; S. & C. 696.]

Notice of application.

SEC 36 Immediately after granting a certificate to an applicant, as aforesaid, the commissioner shall give notice of the application by advertisement, published once in some newspaper published and of general circulation in the county, specifying the day when the applicant is required to appear in the probate court and file his petition. [29 v. 329, § 25; S. & C. 696.]

The commissioner shall make return to the court, and what.

Case to be docketed, and papers filed.

SEC. 37. The commissioner shall, before the third Monday after a certificate is granted by him, return to the probate court the original bond (if any) given to him, and also copies of the schedules and inventories made by said applicant, and also of the examination of such applicant, and of the record of the proceedings of the commissioner, properly certified; and the court shall enter the case on its docket, and file said papers together, for the inspection of any person interested. [29 v. 329, §§ 26, 27; S. & C. 696.]

When petition of applicant to be filed in court.

SEC. 38. On the said third Monday, or the next day, or any day prior thereto, the applicant shall file his petition in the said court, setting forth his said application to the commissioner, and praying to be released from liability to arrest for any debt or claim named in his schedule of debts; and the court shall thereupon, on the said third Monday, or the next day, or any subsequent day after the filing of the petition, cause the creditors of the applicant to be called, and if no creditor shall appear, in person or by attorney, to resist said petition, the court may, without further examination of the petitioner, grant to him a certificate of his having complied with the provisions of law in that behalf, and obtained the relief prayed for, as aforesaid, or said petitioner may be further examined by the court: provided, that it shall first be made to appear to the court that the notice required by this chapter has been given: provided, also, that the court may, for sufficient cause shown, permit said applicant to file his petition, as aforesaid, on any day after the time above limited, not exceeding thirty days thereafter. [29 v. 329, § 28; S. & C. 696.]

If no creditor appear, and notice, etc., given, final certificate granted.

Proceedings if creditor resist.

SEC. 39. If any creditor shall appear in person, or by attorney, to resist said petition, and shall require a further examination of the petitioner, the court may continue the application to a day certain, and such further examination shall in the meantime be made before the commissioner, or any other person, as the court may direct. [29 v. 329, § 29; S. & C. 696.]

SEC. 40. The further examination of the petitioner shall

When several further examination conducted.

be in writing; and his answers to such questions as shall be put to him, shall be reduced to writing by himself, or his attorney, or by the commissioner, or other person appointed by the court, as aforesaid; if the petitioner, while under examination, as aforesaid, shall require further time to answer any questions put to him in writing, it shall be the duty of the person before whom such examination is had to adjourn the same for any time not exceeding one day; and such petitioner shall not be required by his creditors, or any of them, to appear and submit to an examination, as aforesaid, more than twice, unless by adjournment, as aforesaid. [29 v. 329, §§ 30, 31, 32; S. & C. 696.]

When such further examination may be postponed.

The examination to be signed and filed in court.

SEC. 41. When such examination shall be closed, the petitioner shall sign the same, and make oath to the truth thereof, before the commissioner, or before some other person authorized by law to administer oaths; and the said examination shall be returned to the court, and filed. [29 v. 329, § 33; S. & C. 696.]

Proceeding on the final hearing after such further examination.

SEC. 42. Upon the final hearing of the petition, the several examinations of the petitioner may be read as evidence by any creditor; and the petitioner, and any of his creditors, may examine witnesses before the court; and they may also offer any other evidence or depositions taken according to law; and the court, on hearing, may grant to the petitioner a certificate, as aforesaid, or may dismiss his petition, as shall seem just. [29 v. 329, § 34; S. & C. 696.]

How costs awarded on the final hearing.

SEC. 43. When the court shall dismiss the petition of any person applying for relief, judgment shall be rendered against the petitioner for all the costs that have accrued on behalf of the petitioner (except such as have been paid by him to the commissioner), and also in resisting the same; and when the court shall grant the petitioner the relief prayed, judgment shall be rendered against the petitioner for the costs before the commissioner, and in the court, on the part of the petitioner, and not before paid; and the creditors resisting such petition and failing, shall pay their own costs; and all such costs shall be taxed as in other cases, and may be collected by execution; or the court may order that the final certificate shall not be delivered until the petitioner shall pay the costs taxed against him. [29 v. 329, § 35; S. & C. 696.]

Execution therefor, etc.

What to be done with assets, if petition dismissed.

SEC. 44. If the applicant fail to file his petition within the time herein limited or allowed by the court, his application shall be dismissed, and judgment shall be rendered against him for all costs not before paid; but the commissioner in such case, and also when the petition is dismissed on hearing, shall proceed to dispose of any assets covered by the assignment, as if the application had been granted by the court.

SEC. 45. When such applicant shall produce the certificate granted by the commissioner to any officer in whose custody he may be, the officer shall forthwith discharge

such person out of his custody; and the officer shall return, with the process (by virtue of which he had such person in custody), a copy of said certificate; and he shall also return on said process, that, in obedience to such certificate, he had discharged the person named therein; and said certificate shall be returned to the person named therein, by the officer; and the certificate, granted by the court to the petitioner, as aforesaid, shall protect the person of such petitioner forever after from arrest or imprisonment for any civil action, debt, or demand, mentioned in the schedule of his debts, made before the commissioner, as hereinbefore provided, or any fine or penalty for which he shall have been imprisoned sixty days or more; but neither certificate shall protect him from arrest or imprisonment for any debt or demand for money or property received while acting in any fiduciary capacity; and if any sheriff or other officer shall arrest any person having been so discharged by the court, such officer having knowledge of such discharge, and that the person so arrested has a certificate, so granted to him by the court, or shall refuse to discharge the person so arrested out of his custody, as soon as such certificate shall be produced and shown to him, the officer so offending shall be liable to be prosecuted in the court of common pleas, in an action for false imprisonment, at the suit of the party injured; and if judgment shall be rendered against such officer for any sum whatever, in damages, the plaintiff shall recover full costs. [29 v. 329, §§ 22, 36; S. & C. 696: 51 v. 323, § 1; S. & C. 708: 41 v. 15, § 1; S. & C. 706.]

Applicant to be discharged from custody on commissioner's certificate.

Effect of the certificate granted by the court, etc.

SEC. 46. The commissioner may administer all oaths required in matters connected with his duties. [29 v. 329, § 46; S. & C. 696.]

Commissioner to administer all oaths.

SEC. 47. The sections of this chapter relating to voluntary assignments shall be applied and govern the action of the court and the commissioner, as to the presentation and allowance or rejection of claims, the appraisement and conversion of assets into money, the making and paying dividends, and the fees of the probate judge, and in all other respects in the administration of the trust, except as otherwise herein provided. [29 v. 329, §§ 6, 38, 39, 40, 41, 42, 43, 44, 45; S. & C. 696: 32 v. 23, §§ 1, 2; S. & C. 706: 33 v. 50, §§ 1, 2; S. & C. 706: 44 v. 50, § 1; S. & C. 707.]

The sections of this chapter relating to voluntary assignments, to govern the administration of the trust.

SEC. 48. The commissioner shall be entitled to the following fees: For writing the application and bond, if any, each, twenty-five cents; for the inventories, schedules, and assignments, and for the examination at the time of application, and for all copies thereof, ten cents per hundred words; for publishing notice, twenty-five cents, in addition to the amount paid to the printer; all which, he shall have a right to receive before he shall be required to give a certificate to the applicant; and for all other services he shall be entitled to receive a reasonable compensation, to be fixed by the court. [29 v. 329, §§ 52, 53; S. & C. 696.]

Fees of commissioner:

To be paid in advance:

Other fees allowed by court.

Who to act in absence of commissioner.

SEC. 49. Whenever the office of commissioner of insolvents shall be vacant, or in case of the death, absence, or inability of said commissioner, the duties of commissioner shall temporarily be discharged by a master commissioner, but as soon as there is a commissioner to act, all unfinished business shall be turned over to him. [44 v. 50, § 2; S. & C. 707.]

CHAPTER 5.

MARRIAGES.

SECTION
1. Who may contract matrimony.
2. Who may solemnize marriage.
3. How ministers to obtain license to solemnize marriage.
4. Minister to produce to judge his license, in every county in which he solemnizes marriage: the record.
5. Such record or copy, evidence.
6. Before marriage, bans to be published and how: or license to be procured, and where.
7. How license obtained: the fees therefor: penalty for improperly issuing.
8. Certificate of marriage must be transmitted to judge and recorded.
9. Penalty for solemnizing marriage contrary to law, or for unauthorized person attempting to solemnize.
10. When a publication of bans, minister or magistrate must be satisfied thereof, and of consent of parent or guardian.
11. How fines recovered.

Who may contract matrimony.

SECTION 1. Male persons of the age of eighteen years, and female persons of the age of sixteen years, not nearer of kin than second cousins, and not having a husband or wife living, may be joined in marriage: provided, always, that male persons under the age of twenty-one years, and female persons under the age of eighteen years, shall first obtain the consent of their fathers, respectively, or in case of the death or incapacity of their fathers, then of their mothers or guardians. [67 v. 6, § 1.]

Who may olemnize marriage.

SEC. 2. It shall be lawful for any ordained minister of any religious society or congregation, within this state, who has or may hereafter obtain a license for that purpose, as hereinafter provided, or for any justice of the peace in his county, or for the several religious societies, agreeably to the rules and regulations of their respective churches, to join together as husband and wife, all persons not prohibited by law. [29 v. 42, § 2; S. & C. 855.]

How ministers may obtain license to marry.

SEC. 3. Any minister of the gospel, upon producing to the judge of the probate court of any county within this state in which he officiates, credentials of his being a regular ordained minister of any religious society or congregation, shall be entitled to receive from said court a license, authorizing him to solemnize marriages within this state, so long

as he shall continue a regular minister in such society or congregation. [29 v. 429, § 3; S. & C. 855.]

Minister to produce to judge of county in which he solemnizes marriages, his license:

Record of it.

SEC. 4. It shall be the duty of every minister, who is now or hereafter shall be licensed to solemnize marriages, as aforesaid, to produce to the judge of the said court, in every county in which he shall solemnize any marriage, his license so obtained; and the said judge shall thereupon enter the name of such minister upon record, as a minister of the gospel duly authorized to solemnize marriages within this state, and shall note the county from which such license issued; for which service no charge shall be made by such judge. [29 v. 429, § 4; S. & C. 855.]

Such record or copy, evidence.

SEC. 5. When the name of any such minister is so entered upon the record, by the judge aforesaid, such record, or the certificate thereof, by the said judge, under the seal of his court, shall be good evidence that the said minister was duly authorized to solemnize marriages. [29 v. 429, § 5; S. & C. 855.]

Before marriage, bans to be published, and how; or license to be procured, and where.

SEC. 6. Previous to persons being joined in marriage, notice thereof shall be published (in the presence of the congregation), on two different days of public worship; the first publication to be at least ten days previous to such marriage, within the county where the female resides; or, a license shall be obtained for that purpose from the probate judge in the county where such female may reside. [29 v. 429, § 6; S. & C. 855.]

How such license obtained:

SEC. 7. The probate judge, as aforesaid, may inquire of the party applying for marriage license, as aforesaid, upon oath, relative to the legality of such contemplated marriage; and if the judge shall be satisfied there is no legal impediment thereto, then he shall grant such marriage license; and if any of the persons intending to marry shall be under age, and shall not have had a former wife or husband, the consent of the parents or guardians shall be personally given before the judge, or certified under the hand of such parent or guardian, attested by two witnesses, one of whom shall appear before said judge, and make oath that he saw the parent or guardian, whose name is annexed to such certificate, subscribe, or heard him or her acknowledge the same; and the judge is hereby authorized to administer such oath, and thereupon issue and sign such license, and affix thereto the seal of the court; the judge shall be entitled to receive as his fee, for administering the oath and granting license, with the seal affixed thereto, recording the certificate of marriage, and filing the necessary papers, the sum of seventy five cents; and if any judge shall, in any other manner, issue or sign any marriage license, he shall forfeit and pay a sum not exceeding one thousand dollars, to and for the use of the party aggrieved. [29 v. 429, § 7; S. & C. 855.]

The license, and fees therefor:

Fees for recording certificate of marriage, etc.:

Penalty for improperly issuing license.

SEC. 8. A certificate of every marriage hereafter solemnized, signed by the justice or minister solemnizing the same, shall be transmitted to the probate judge in the county

Certificate of marriage must be transmitted to probate judge, and recorded.

wherein the marriage license was issued, within three months thereafter, and recorded by such probate judge; every justice or minister failing to transmit such certificate to the probate judge in due time, shall forfeit and pay fifty dollars; and if the probate judge shall neglect to make such record, he shall forfeit and pay fifty dollars to and for the use of the county. [63 v. 46, § 8; S. & S. 447.]

Penalty against minister or justice for solemnizing marriage contrary to intent of this chapter:

Or for unauthorized person to solemnize a marriage.

SEC. 9. If any justice or minister, by this chapter authorized to join persons in marriage, shall solemnize the same contrary to the true intent and meaning of this chapter, the person so offending shall, upon conviction thereof, forfeit and pay any sum, not exceeding one thousand dollars, to and for the use of the county wherein such offense was committed; and if any person not legally authorized, shall attempt to solemnize the marriage contract, such person shall, upon conviction thereof, forfeit and pay five hundred dollars, to and for the use of the county wherein such offense was committed. [29 v. 429, § 9; S. & C. 855.]

When a publication of bans, minister or justice must be satisfied thereof, and of consent of parent or guardian, before he marries the parties.

SEC. 10. It shall be the duty of every minister, or justice of the peace, before he shall solemnize any marriage between the parties, either of whom is required, by the first section of this chapter, to obtain the consent of his or her parent or guardian (except in cases where license shall have been obtained from the judge of the probate court), to be satisfied that the intention of marriage between such parties has been duly published, and also that the consent of such parent or guardian has been obtained, either by acknowledgment in presence of such minister or justice of the peace, or by a certificate under the signature of such parent or guardian, and attested by one or more credible witnesses, who shall be present for the purpose of satisfying such minister or justice of the peace that such certificate was actually signed by the parent or guardian, for the purpose aforesaid. [29 v. 429, § 10; S. & C. 855.]

How fines recovered.

SEC. 11. Any fine or forfeiture arising to the county, in consequence of the breach of this chapter, shall be recovered by an action of debt, with costs of suit, in any court of record having cognizance of the same. [29 v. 429, § 11; S. & C. 855.]

CHAPTER 6.

STATISTICS OF BIRTHS AND DEATHS.

SECTION
1. Probate judge shall keep record of births and deaths: and how.
2. Duties of assessors, physicians, midwives, and clergymen.
3. Duty of probate judge, as to blanks for statistics.
4. His duty as to recording and transmitting abstract to secretary of state.
5. Effect of record, as evidence.

SECTION 1. The probate judge shall keep a record of the

births and deaths reported to him, as hereinafter provided; the births shall be numbered, recorded, and alphabetically indexed in the order in which they are received, and the record shall state, in separate columns, the date of making the record, the date and place of birth, the name, sex, and color of the child, the maiden name of the mother, and the name of the father of the child, and the residence of the parents, as fully as the same are reported; the deaths shall be likewise numbered, recorded, and indexed, and the record thereof shall state in separate columns, so far as the same is reported, the date and place of death, name and surname of the deceased, condition (whether single, married, or widowed), age, place of birth, occupation, names of parents (when an infant without name), cause of death, color, and last place of residence of such deceased person, and the date of making the record. [66 v. 69, § 1.]

Probate judges shall keep a record of births and deaths.

SEC. 2. It shall be the duty of the assessors of the several townships and wards of each county of this state, to obtain, annually, the foregoing statistics, at the time each assessor shall make the assessment of his respective township or ward for the year ending the last of March, preceding each annual assessment, and report the same to the probate judge of his county, at the time of his regular report to the county auditor; and at the time of submitting his report to the probate judge, he shall state upon oath that he has made diligent inquiry in order to obtain the number of births and deaths, and other information required by this chapter, in his township or ward, respectively; and if any assessor in this state shall fail or refuse to make such report, or to make and file the affidavit required by this act, the auditor of his county shall withhold his order until the law has been complied with, to the satisfaction of the probate judge, except in counties containing cities of the first class, having a population of one hundred and fifty thousand and over, in which counties it shall be the duty of the physicians and professional midwives to keep a registry of the several births in which they have assisted professionally, which shall contain, as near as the same can be ascertained, the time of such birth, sex, color of the child, the names and residence of the parents; and physicians who have attended deceased persons in their last illness, clergymen who have officiated at the funeral, and sextons who have buried deceased persons, shall keep a registry of the name, age, and residence of such deceased persons at the time of their death; it shall be the duty of the physicians and professional midwives to report fully the births registered by them, as required by this chapter, to the judge of the probate court of the county every three months, viz., on or before the second Monday of the months of January, April, July, and October of each year; in case there is no physician or midwife in attendance at any birth, then the parents shall be required to report to the probate judge within one month; and physicians, clergy-

Statistics to be obtained annually by assessors:

Duties of physicians and midwives in certain cities:

Of clergymen and sextons.

men, and sextons shall likewise report fully the deaths registered by them, as required by this chapter, to the judge of the probate court of the county, every three months, as above designated; and any person who shall neglect or refuse to comply with, or violate the provisions of this chapter, shall forfeit and pay for each offense the sum of ten dollars, to be sued for and recovered in the name of the state of Ohio, and the penalty, when recovered, shall be paid over, one-half to the school fund, and one-half to the party making complaint thereof. [68 v. 49, § 2.]

Duty of probate judge as to blanks for statistics.

SEC. 3. It shall be the duty of the probate judge to furnish to each assessor of the several townships or wards of his county, annually, and to other persons making such report, a sufficient number of properly ruled blanks, which shall be paid for out of the county treasury, upon which to make such report to said probate judge. [66 v. 69, § 3.]

Probate judge to keep record, and transmit abstract to secretary of state.

SEC. 4. It shall be the duty of the probate judge, receiving the reports as above specified, within fifteen days after the receipt thereof, to record the same in a book to be provided by the county commissioners for that purpose, and to transmit an abstract thereof, on or before the first Monday of August, every year, to the secretary of state, in such form as shall be prescribed by that officer, who shall file the same in his office, to be used by him in his annual report to the legislature. [73 v. 203, § 3.]

Evidence in courts.

SEC. 5. Every original entry, made as above described, and a copy of such entry duly certified over the seal of said court, shall be received in all courts and places as prima facie evidence of the facts therein stated, and said records shall be open to the inspection of the public at all proper hours. [66 v. 69, § 5]

CHAPTER 7.

GENERAL PROVISIONS.

SECTION
1. By whom questions of fact to be determined.
2. Bonds to be filed when approved.
3. Notice of filing accounts to be published.
4. Examination of accountants under oath.
5. Depositions on trial in probate court.
6. Fees of witnesses, jurors, and officers, same as in common pleas.
7. How notices of proceedings in probate court given.
8. When appeals may be taken to common pleas.
9. Bond on appeal; when bond not required.
10. Transcript, when to be filed.
11. Proceedings in common pleas and certifying same back.
12. Code of common pleas to govern in the probate court so far as applicable.
13. What affidavit must be filed before private sale confirmed.
14. How executors, etc., may invest funds.

SECTION 1. All questions, except those arising in crimi-

nal actions and proceedings, unless otherwise provided by law, shall be determined by the probate judge, unless, in his discretion, he shall order the same to be tried by a jury, or referred, as provided for references in the court of common pleas. [51 v. 167, § 28; S. & C. 1212.]

By whom questions of fact to be determined.

Sec. 2. All undertakings and bonds, required or authorized by law to be given in the probate court, shall be, on being accepted and approved by the probate judge, filed in his office. [51 v. 167, § 26; S. & C. 1212.]

Bonds, etc., to be approved and filed.

Sec. 3. It shall be the duty of the probate judge to cause notice to be published in some newspaper of the county, of the filing of any accounts by executors, administrators, guardians, and trustees, and assignees, trustees, and commissioners of insolvents, specifying the time when such accounts will be heard, which shall not be less than three weeks after the publication of such notice, at which time it shall be competent for said probate judge, for cause, to allow further time to file exceptions to said accounts; and the costs of such notice shall be paid, if more than one account be specified in the same notice, in equal proportions by the executors, administrators, guardians, trustees, and assignees, trustees or commissioners of insolvents, respectively. [51 v. 167, § 20; S. & C. 1212.]

Notice of filing accounts to be published.

Sec. 4. The probate judge shall have full power and authority to examine under oath, all executors, administrators, guardians, and trustees, and assignees, trustees, and commissioners of insolvents, touching their accounts; and if he shall think proper to do so, he may reduce such examination to writing, and require such executor, administrator, assignee, trustee, or guardian, to sign the same, and such examination shall be filed with the papers in the case. [51 v. 167, § 21; S. & C. 1212.]

Examination of accountants under oath.

Sec. 5. Depositions taken according to the provisions of law for taking depositions to be used on the trial of civil causes, may be taken and used on the trial of any question before the probate court, where such testimony may be proper. [51 v. 167, § 19; S. & C. 1212.

Depositions on trial in probate court.

Sec. 6. The fees of witnesses, jurors, sheriffs, coroners, and constables, for all services rendered in the probate court, or by order of the probate judge, shall be the same as is provided by law, for like services in the court of common pleas. [51 v. 167, § 29; S. & C. 1212.]

Fees of witnesses, jurors, and officers, same as, etc.

Sec. 7. When notice of any proceedings in a probate court shall be required by law, or be deemed necessary by the probate judge, and the manner of giving the same shall not be directed by statute, the probate judge shall order notice of such proceedings to be given to all persons interested therein, in such manner and for such length of time as he shall deem reasonable. [51 v. 167, § 27; S. & C. 1212.]

How notice of proceedings in probate court given.

Sec. 8. In addition to cases specially provided for, appeals may be taken to the court of common pleas, from any order, decision, or judgment of the probate court in settling

When appeals may be taken from probate court to court of common pleas.

the accounts of an executor, administrator, guardian, and trustees, and assignees, trustees, and commissioners of insolvents; in proceedings for the sale of real estate for the payment of debts; in cases where the probate court shall have increased or diminished the allowance made by appraisers of any estate to any widow or minor child or children, for their support for one year; in proceedings against persons suspected of having concealed, embezzled or conveyed away the property of deceased persons; in cases for the completion of real contracts, and from order or decision in the administration of insolvents' estates by assignees, trustees, or commissioners; and in proceedings to appoint guardians or trustees for lunatics, idiots, imbeciles, or drunkards, by any person against whom such order, decision, or decree shall be made, or who may be affected thereby; and the cause so appealed shall be tried, heard, and decided in the court of common pleas, in the same manner as though the said court of common pleas had original jurisdiction thereof. [68 v. 57, § 3]

Bond.

SEC. 9. The person desiring to take an appeal, as provided in the preceding section, shall, within twenty days after the making of the order, decision, or decree from which he desires to appeal, give a written undertaking, executed on the part of the person appealing, to the adverse party, with one or more sufficient sureties, to be approved by the probate judge, and conditioned that the party appealing shall abide and perform the order, judgment, or decree of the appellate court, and shall pay all moneys, costs, and damages, which may be required of or awarded against said party, by such court; when the order, decision, or decree, from which the appeal is taken, directs the payment of money, the undertaking shall be in double the amount thereof, and in other cases, in such amount as shall be prescribed by the probate court; but when the person appealing, is a party in a fiduciary capacity, in which he has given bond within the state, for the faithful discharge of his duties, and appeals in the interest of the trust, he shall not be required to give bond, but shall be allowed the appeal, by giving written notice to the court of his intention to appeal within the time limited for giving bond. [52 v. 103, §§ 4, 6; S. & C. 1218: 38 v. 146, § 243; S. & C. 566.]

When bond not required.

Transcript, when to be filed.

SEC. 10. The probate judge shall, upon the giving of the undertaking, or notice, as aforesaid, make out an authenticated transcript of the docket or journal entries, and of the order, decision, or decree appealed from, which shall be filed with the clerk of the court of common pleas, on or before the second day of the term of said court, next after an undertaking or notice is given, as hereinbefore provided, by the person appealing, and the appeal shall thereupon be considered perfected; the original papers pertaining to the cause may be used upon the trial, or hearing in the court of common pleas. [52 v. 103, § 5; S. & C. 1218.]

Proceedings in common pleas, and certifying same back.

SEC. 11. Upon the decision of any cause, appealed to the court of common pleas, the clerk of said court shall make out an authenticated transcript of the order, judgment, and proceedings of said court therein, and shall file the same with the probate judge, who shall record the same, and the proceedings thereafter shall be the same as if such order, judgment, and proceedings had been had in the probate court. [52 v. 103, § 7; S. & C. 1218.]

Code of common pleas to govern in probate court, so far as applicable.

SEC. 12. The provisions of law governing civil proceedings in the court of common pleas shall, so far as applicable, govern like proceedings in the probate court, when there is no provision on the subject in this title.

When affidavit to be filed, before private sale confirmed.

SEC. 13. Before the court shall confirm a sale by an executor, administrator, guardian, assignee, or trustee, made under an order allowing such officer to make private sale, the court shall require such officer to make and file an affidavit that such private sale has been made after diligent endeavor to obtain the best price for the property, and that the sale reported, is for the highest price that he could get for the property.

How executors, etc., may invest funds.

SEC. 14. Executors, administrators, guardians, and trustees, may, when they have funds belonging to the trust, which are to be invested, invest the same in the certificates of the indebtedness of this state, or of the United States, or in such other securities as may be approved by the court having control of the administration of the trust; and whenever funds belonging to the trust are stopped in their hands by litigation or otherwise, and the same are likely to remain in their hands one year or more, they may invest the same in the same manner. [60 v. 20, § 1; S. & S. 922: 65 v. 80, § 1; S. & S. 923.]

CHAPTER 8.

CRIMINAL.

SECTION
1. Criminal jurisdiction, and in what counties.
2. Prosecution to be by information.
3. Information shall not be quashed for error in original examination.
4. Prosecution may begin in probate court.
5. Amendment of information.
6. Charges to be distinctly read.
7. Pleas.
8. Pleas: how entered and withdrawn.
9. What plea of not guilty includes.
10. If defendant refuse to plead.
11. Judge to try, if jury not demanded.
12. When jury may be demanded, and trial by.
13. How jury drawn and summoned.
14. How recognizances taken, and how returned.
15. Monthly terms.
16. Effect of recognizances, and when accused may be tried.
17. Compensation of judges: fees and fines to be paid into county treasury.
18. Indorsement for costs, and judgment thereon.
19. Provisions for common pleas, to govern in probate court so far as applicable.

Criminal jurisdiction in certain counties.

SECTION 1. The probate court shall have jurisdiction concurrent with the court of common pleas, of all misdemeanors, in the following counties: Cuyahoga, Lake, Lucas, Montgomery, Erie, Richland, Scioto, Holmes, Meigs, Henry, Belmont, Stark, Ottawa, Williams, Allen, Wood, Sandusky, Van Wert, Darke, Wyandot, Coshocton, Defiance, Portage, Clermont, Carroll, Gallia, Hocking, Brown, Lorain, Columbiana, Madison, Clinton, Shelby, Geauga, Mahoning, Jefferson, and Monroe. [55 v. 176, § 1; S. & C. 1220: 51 v. 167, § 3; S. & C. 1212: 73 v. 23, § 1: 69 v. 104, § 1: 62 v. 172, § 1; S. & S 631: 66 v. 72, § 1: 64 v. 66 § 1; S. & S. 632: 59 v. 20, § 1; S. & S. 630: 56 v. 303, § 1; S. & C. 1224: 57 v. 111, § 1; S. & C. 1224: 58 v. 34, § 1; S. & S. 629: 73 v. 87, § 1.]

Prosecution to be by information.

SEC. 2. In no prosecutions for crimes, offenses, and misdemeanors, of which said probate court shall have cognizance, shall an indictment by the grand jury be required, but in all criminal cases brought before said court, the prosecuting attorney shall immediately file with said probate court, an information setting forth briefly, but distinctly, in plain and ordinary language, the charges against the accused person, and on which charges such person shall be tried. [55 v. 176, § 2; S. & C, 1219: 55 v. 186, § 4; S. & C. 1221.]

Informations shall not be quashed for error in original examination.

SEC. 3. It shall not be lawful for said court to quash any information filed by the prosecuting attorney, because of any defect or error in the papers or proceeding of any justice of the peace, or mayor, before whom the original examination in the case was had: provided, that no information shall be filed by any such prosecuting attorney, before such judge, for any offense not specified in the transcript from the docket of such justice of the peace or mayor. [53 v. 137, § 1; S. & C. 1219.]

Prosecution may begin in probate court.

SEC. 4. The prosecuting attorney of any such county may file his information originally in the probate court, without a preliminary hearing before an examining court, upon the proper affidavits being filed therein, and the judge shall issue his warrant for the arrest of the defendant, who, when arrested, shall be taken before said judge, and thereupon, if not discharged, be recognized to appear at the next term of said court, or in default thereof, to be committed to the jail of the proper county. [53 v. 137, § 2; S. & C. 1219.]

Amendments.

SEC. 5. Informations may be amended at any time before or during trial, on such terms as said probate court may direct, and in all cases when such amendment is material, the defendant may elect to continue the cause. [55 v 176, § 3; S. & C. 1219: 55 v. 186, § 4; S. & C. 1221.]

Charges to be distinctly read.

SEC. 6. In all cases in which said probate court shall have criminal jurisdiction, when the defendant is brought before said court, the charges against him shall be distinctly read to him, and he shall be required to plead thereto. [55 v. 176, § 4; S. & C. 1219.]

Pleas.

SEC. 7. The defendant may plead—1. Guilty. 2. Not guilty. 3. A former judgment of conviction or acquittal of

the offense charged, which may be pleaded either with or without the plea of not guilty. [55 v. 176, § 5; S. & C. 1219.]

Pleas, how entered and withdrawn.

SEC. 8. Every plea shall be oral, and shall be entered on the minutes of the court, in substantially the following form: If the defendant pleads guilty, the defendant pleads guilty of the offense charged against him; if the defendant pleads not guilty, the defendant pleads that he is not guilty of the offense charged against him; if he pleads a former conviction or acquittal (as the case may be), the defendant pleads that he has already been convicted or acquitted (as the case may be), of the offense charged against him, by the judgment of the court ———, (naming it), at———,(naming the place), the day of———; said probate court may, at any time before judgment, upon a plea of guilty, permit it to be withdrawn, and a plea of not guilty substituted. [55 v. 176, §§ 6, 7; S. & C. 1219.]

What plea of not guilty includes.

SEC. 9. A plea of not guilty shall be deemed a denial of every material allegation in the information; and all matters of defense tending to establish a defense, may be given in evidence under the plea of not guilty. [55 v. 176, § 8; S. & C. 1219.]

If defendant refuse to plead.

SEC. 10. If the defendant refuse to answer the information, a plea of not guilty shall be entered. [55 v. 176, § 9; & C. 1219: 55 v. 186, § 9; S. & C. 1221.]

Judge to try, if jury not demanded.

SEC. 11. Upon a plea, other than the plea of guilty, if the defendant do not demand a trial by jury, the judge of said probate court shall proceed to try said issue. [55 v. 176, 0; S. & C. 1219: 55 v. 186, § 9; S. & C. 1221.]

When jury may be demanded, and trial by.

SEC. 12. Before the court shall have received any testimony upon the trial, the defendant may demand a trial by jury, and upon such trial, the jury shall be subject to the same challenges as jurors in like cases are now subject to in the court of common pleas. [55 v. 176, § 11; S. & C. 1219.]

How jury drawn and summoned.

SEC. 13. The jury for the trial of criminal cases in the probate court, shall be drawn as for the court of common pleas, before or during any term of the said probate court, as the said probate court may order, and a venire for such jury to attend either forthwith, or on a day named, shall be issued by the said probate court; which venire shall be served and returned in the same manner as a venire from the court of common pleas. [72 v. 9, § 13.]

How recognizances taken, and when returned:

SEC. 14. All recognizances which shall or may be taken by any justice of the peace in said counties, or other officers in said counties authorized to take the same, and all transcripts of criminal cases, within the jurisdiction of said probate court, as defined by law, may be returned either to the probate court or the court of common pleas of said counties; and the same shall be returned to one or the other of said courts, forthwith after the commitment of the person charged with the offense, or after the taking of a recognizance, for his appearance before one or the other of said courts; and

And in what court accused must appear.

whichever of said courts the same may be returned to, or the accused may by the terms of the recognizance be required to appear in, the prosecuting attorney may, at his election, proceed in either of said courts with the prosecution, and the accused shall be bound to appear therein and answer to his recognizance. [55 v. 176, § 12; S. & C. 1219.]

Monthly terms.

SEC. 15. In the exercise of criminal jurisdiction, the probate judges shall be considered as holding monthly terms, commencing on the first Monday of each month: provided, that the county commissioners in any county where such court has jurisdiction, may, by order entered on their journal and published for three successive weeks in some newspaper printed within the county, fix its terms at longer intervals, and in like manner change such order. [55 v. 176, § 13; S. & C. 1219.]

Effect of recognizance, and when accused may be tried.

SEC. 16. If any justice of the peace or other officer authorized to examine and hold to bail any person, recognize such person to appear forthwith before such court, or in default of bail commit such person, and said court shall have adjourned before said recognizance shall have been entered into or commitment made, or before the same and a transcript of the proceedings shall have been filed in said probate court, said recognizance or commitment shall not thereby become void, but the defendant shall be made to answer at the next term of said court; and if said justice or other officer shall recognize or commit as aforesaid, any person to appear in said court at the next term thereof, said court being in session at the time said recognizance is entered into or commitment made and a transcript filed, said recognizance or commitment shall not thereby become void, but the defendant, appearing in said court, may, with the consent of the prosecuting attorney, be tried at the then present term of said court. [55 v. 176, § 14; S. & C. 1219.]

Compensation of judge—fees and fines to be paid into county treasury.

SEC. 17. The judges of said probate courts shall be paid for their services in criminal cases such sums as the commissioners of said counties may allow, which sums shall be paid out of the county treasury of said counties, respectively, and said probate judges shall not receive any compensation by way of fees in any criminal business of which they have jurisdiction; but all costs, and all fines by said probate court imposed, including the fees of the judge, shall be collected in the same manner as fines and costs are now collected by the court of common pleas, and the same by said probate judges shall be paid into the county treasury. [55 v. 176, § 15; S. & C. 1219.]

Indorsement for costs, and judgment thereon.

SEC. 18. The prosecuting attorneys may, in all criminal cases prosecuted in said probate courts, require the prosecutor to indorse the information for costs, and in all cases where the name of the prosecutor is so indorsed and the defendant or defendants are acquitted, he shall be liable for the costs, and the court, at the term at which such acquittal shall take place, or any subsequent term, shall render judg-

ment against such prosecutor for costs, unless the court shall be of opinion that there was reasonable ground for instituting the prosecution. [55 v. 176, § 16; S. & C. 1219.]

Provisions for common pleas to govern in probate court so far as applicable.

SEC. 19. The provisions governing criminal proceedings in the court of common pleas shall, so far as applicable, govern like proceedings in the probate court.

CHAPTER 9.

REPEALS.

SECTION
1. Acts and parts of acts repealed.
SECTION
2. When act to take effect.

SECTION 1. The following acts and parts of acts are hereby repealed:

1. The act of March 23, 1840, entitled "an act to provide for the settlement of the estates of deceased persons." S. & C. 566; 38 v. 146.

2. The act of March 12, 1844, entitled "an act to amend the act entitled an act to provide for the settlement of the estates of deceased persons, passed March 23, 1840." S. & C. 613; 42 v. 52.

3. The act of February 19, 1845, entitled "an act in addition to the act entitled an act to provide for the settlement of the estates of deceased persons, passed March 23, 1840." S. & C. 613; 43 v. 20.

4. The act of February 28, 1846, entitled "an act to amend the act entitled an act to provide for the settlement of the estates of deceased persons, passed March twenty-third, eighteen hundred and forty, and for the relief of the administrators de bonis non, of Josephus Reed, deceased." S. & C. 613; 44 v. 76.

5. The act of March 20, 1851, entitled "an act to amend the act entitled an act to amend the act to regulate the practice of the judicial courts, passed February 25, 1848; also, to amend the act passed March 21, 1850, in amendment of the practice of the judicial courts." S. & C. 613; 49 v. 25.

6. The act of February 5, 1847, entitled "an act to amend the act to provide for the settlement of estates of deceased persons, passed March 23, 1840." S. & C. 614; 45 v. 25.

7. The act of March 10, 1849, entitled "an act to amend the act entitled an act to provide for the settlement of the estates of deceased persons, passed March 23, 1840." S. & C. 614; 47 v. 28.

8. The act of March 6, 1857, entitled "an act to amend an act entitled an act to provide for the settlement of the estates of deceased persons, passed March 23, 1840." S. & C. 615; 54 v. 3.

9. The act of March 25, 1851, entitled "an act further to amend the act entitled an act to provide for the settlement of the estates of deceased persons, passed March 23, 1840." S. & C. 616; 49 v. 106.

10. The act of March 19, 1852, entitled "an act to amend the act entitled an act to provide for the settlement of the estates of deceased persons, passed March 23, 1840." S. & C. 617; 50 v. 126.

11. The act of March 24, 1852, entitled "an act to extend

S. & C. 617; 50 v. 127. the time in which administration may be granted in certain cases, and to repeal the twentieth section of the act to provide for the settlement of the estates of deceased persons, passed March 23, 1840."

S. & C. 618; 51 v. 354. 12. The act of February 26, 1843, entitled "an act supplementary to the act entitled an act to provide for the settlement of the estates of deceased persons."

S. & C. 619; 52 v. 24. 13. The act of April 7, 1854, entitled "an act concerning suits on the bond of executors and administrators."

S. & C. 619; 54 v. 202. 14. The act of April 17, 1857, entitled "an act to provide for the more speedy collection of claims of creditors, legatees, and distributees of executors, administrators, and guardians, and to define the jurisdiction of the court of common pleas, and probate court, in certain cases."

S. & C. 622; 55 v. 157. 15. The act of April 12, 1858, entitled "an act to amend the act supplementary to the act entitled an act to provide for the settlement of the estates of deceased persons, passed March 23, 1840."

S. & C. 670; 55 v. 54. 16. The act of April 12, 1858, entitled "an act concerning the relation of guardian and ward."

S. & C. 675, et seq.; 56 v. 88: Curwen 3231. 17. The act of March 30, 1859, entitled "an act supplementary to and to amend an act concerning the relation of guardian and ward, passed April 12, 1858."

S. & C. 680; 52 v. 76. 18. The act of April 29, 1854, entitled "an act supplementary to an act entitled an act to provide for the recording of town plats, passed March 3, 1831."

S. & C. 680; 50 v. 265. 19. The act of April 30, 1852, entitled "an act to authorize guardians to release the interest of their wards in tax titles to real estate."

S. & C. 696; 29 v. 329. 20. The act of March 12, 1831, entitled "an act for the relief of insolvent debtors."

S. & C. 706; 32 v. 23. 21. The act of February 28, 1834, entitled "an act to amend an act entitled an act for the relief of insolvent debtors."

S. & C. 706; 32 v. 50. 22. The act of March 9, 1835, entitled "an act to amend the act entitled an act to amend an act entitled an act for the relief of insolvent debtors, passed February 28, 1834."

S. & C. 706; 41 v. 15. 23. The act of January 25, 1843, entitled "an act further to amend an act entitled an act for the relief of insolvent debtors, passed February 28, 1834."

C. 707; 29. 24. The act of March 4, 1844, entitled "an act to amend the act entitled an act for the relief of insolvent debtors."

S. & C. 707; 44 v. 50. 25. The act of February 19, 1846, entitled "an act to amend the act entitled an act for the relief of insolvent debtors, passed March 12, 1831."

S. & C. 708; 51 v. 323. 26. The act of February 1, 1853, entitled "an act supplementary to the act for the relief of insolvent debtors."

S. & C. 709; 56 v. 231. 27. The act of April 6, 1859, entitled "an act regulating the mode of administering assignments in trust for the benefit of creditors."

28. The act of March 16, 1860, entitled "an act to amend

the act entitled an act regulating the mode of administering assignments in trust for the benefit of creditors, passed April 6, 1859."	S. & C. 709; 57. v. 39; Curwen 3404.
29. The act of March 26, 1860, entitled "an act to amend sections five and six of an act entitled an act regulating the mode of administering assignments in trust for the benefit of creditors, passed April 6, 1859."	S. & C. 710; 57 v. 118; Curwen 3467.
30. Sections forty-one, forty-two, forty-three, forty-four, forty-six, forty-eight, and fifty-one, of the act of April 7, 1856, entitled "an act to provide for the uniform government and better regulation of the lunatic asylums of the state and the care of idiots and the insane."	S. & C. 840; 53 v. 81.
31. The act of January 6, 1824, entitled "an act regulating marriages."	S. & C. 855; 29 v. 429.
32. The act of March 25, 1851, entitled "an act requiring compensation for causing death by wrongful act, neglect, or default."	S. & C. 1139; 49 v. 117.
33. Sections nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, and fifty-seven, of the act of March 14, 1853, entitled "an act defining the jurisdiction and regulating the practice of probate courts."	S. & C. 1212; 51 v. 167.
34. The act of May 1, 1854, entitled "an act supplementary to the act entitled an act defining the jurisdiction and regulating the practice of probate courts, passed March 14, 1853, and to amend said act."	S. & C. 1218; 52 v. 103.
35. The act of April 11, 1856, entitled "an act to amend an act entitled an act defining the jurisdiction and regulating the practice of probate courts, passed March 14, 1853."	S. & C. 1219; 53 v. 137.
36. The act of April 8, 1858, entitled "an act giving special jurisdiction to the probate courts of Cuyahoga and Lake counties."	S. & C. 1220; 55 v. 176.
37. The act of April 12, 1858, entitled "an act defining the jurisdiction and regulating the practice of probate courts in the counties of Erie, Lucas, Richland, Holmes, Montgomery, Delaware, Franklin, Scioto, and Jefferson."	S. & C. 1221; 55 v. 186.
38. The act of April 4, 1859, entitled "an act defining the jurisdiction of probate courts in criminal cases in the counties of Pike, Portage, Jackson, Clermont, Carroll, Gallia, Butler, Lucas, Hocking, Defiance, Brown, Lorain, Coshocton, and Columbiana."	S. & C. 1223; 56 v. 300.
39. The act of March 26, 1860, entitled "an act defining the jurisdiction of the probate court of Clinton county in criminal cases, and to amend sections twelve and eighteen of an act herein named."	S. & C. 1224; 57 v. 111; Curwen 3462.
40. The act of April 4, 1859, entitled "an act defining the jurisdiction of the probate court of Madison county, in criminal cases."	S. 56 v. 303.
41. The act of May 3, 1852, entitled "an act relating to wills, and the repeal of former acts relating thereto," except sections nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, and twenty-five of said act.	S. & C. 1615; 50 v. 237.

S. & C. 1623; 55 v. 36: Curwen 3050.
42. The act of April 2, 1858, entitled "an act to amend the forty-third section of an act relating to wills, passed May 3, 1852."

S. & C. 1623; 57 v. 30: Curwen 3397.
43. The act of March 10, 1860, entitled "an act to amend the forty-fourth section of an act relating to wills, passed May 3, 1852."

S. & S. 350; 59 v. 98.
44. The act of May 1, 1862, entitled "an act to amend section thirteen of an act entitled an act to provide for the settlement of estates of deceased persons, passed March 23, 1840."

S. & S. 353; 65 v. 180.
45. The act of May 12, 1868, entitled "and act to amend section one of an act entitled an act to amend section forty-three of an act entitled an act to provide for the settlement of estates of deceased persons, passed March 22, [23], 1840, as amended March 12, 1861, passed April 9, 1863."

S. & S. 354; 64 v. 57.
46. The act of March 12, 1867, entitled "an act to amend an act entitled an act to provide for the settlement of the estates of deceased persons, passed March 23, 1840."

S. & S. 356; 64 v. 35.
47. The act of March 5, 1867, entitled "an act to authorize and empower administrators and executors in certain cases to erect tombstones or monuments to the memory of deceased persons."

S. & S. 356; 64 v. 211.
48. The act of April 16, 1867, entitled "and act to provide for the payment of United State duties or taxes on estates of deceased persons."

S. & S. 357; 60 v. 95.
49. The act of April 14, 1863, entitled "an act to authorize administrators, executors, and guardians, to sell certain stocks therein named."

S. & S. 358; 58 v. 46.
50. The act of March 22, 1861, entitled "an act to relieve sureties of executors and administrators."

S. & S. 381; 63 v. 43.
51. The act of March 20, 1866, entitled "an act to amend section ten of an act concerning the relation of guardian and ward, passed April 12, 1858."

S. & S. 382; 59 v. 19.
52. The act of March 6, 1862, entitled "an act supplementary to an act entitled an act concerning the relation of guardian and ward, passed April 12, and took effect July 1, 1858."

S. & S. 383; 64 v. 14.
53. The act of February 15, 1867, entitled "an act to amend section twenty-eight of an act entitled an act concerning the relation of guardian and ward, passed April 12, 1858, as amended by section three of an act entitled an act supplementary to and to amend the act concerning the relation of guardian and ward, passed March 30, 1862, [1859.]"

S. & S. 386; 65 v. 7.
54. The act of February 12, 1868, entitled "an act supplementary to an act concerning the relation of guardian and ward, passed April 12, 1858."

S. & S. 395; 58 v. 165.
55. The act of April 18, 1861, entitled "an act to amend section one of an act entitled an act to amend sections five and nine of an act entitled an act regulating the mode of administering assignments in trust for the benefit of creditors, passed April 6, 1859."

56. The act of January 9, 1861, entitled "an act to amend

section fifteen of an act entitled an act regulating the mode of administering assignments in trust for the beneft of creditors, passed April 6, 1859." S. & S. 396; 58 v. 3.

57. The act of February 12, 1863, entitled "an act to amend section seventeen of the act entitled an act regulating the mode of administering assignments in trust for the benefit of creditors, passed April 6, 1859." S. & S. 397; 60 v. 6.

58. The act of March 6, 1861, entitled "an act supplementary to the act regulating the mode of administering assignments in trust for the benefit of creditors, passed April 6, 1859." S. & S. 398; 58 v. 26.

59. The act of May 16, 1868, entitled "an act to amend section forty-five of the act entitled an act to provide for the uniform government and better regulation of the lunatic asylums of the state, and the care of idiots and the insane, passed April 7, 1856." S. & S. 435; 65 v. 206.

60. The act of April 11, 1863, entitled "an act to amend sections forty-seven and forty-eight of the act entitled an act to provide for the uniform government and better regulation of the lunatic asylums of the state, and care of idiots and insane, passed April 7, 1856." S. & S. 436; 60 v. 76.

61. The act of March 16, 1865, entitled "an act to amend section fifty of an act entitled an act to provide for the uniform government and better regulation of the lunatic asylums of the state, and the care of idiots and the insane, passed April 7, 1856." S. & S. 437; 62 v. 43.

62. The act of March 11, 1867, entitled "an act to authorize the guardians of lunatics and idiots to lease the lands of their wards." S. & S. 437; 64 v. 48.

63. The act of April 18, 1862, entitled "an act to enable the wife of an insane person to release her dower in the real estate of her husband." S. & S. 438; 59 v. 55.

64. The act of April 8, 1865, entitled "an act to authorize guardians of insane widows to compromise their right of dower in certain cases." S. & S. 441; 62 v. 102.

65. The act of March 21, 1863, entitled "an act authorizing executors, administrators, guardians, and all trustees of funds now by the laws of this state allowed to invest in the funded debt of the state of Ohio, to invest in the funded debt of the United States." S. & S. 922; 60 v. 20.

66. The act of March 28, 1865, entitled "an act regulating the administration of trust estates." S. & S. 922; 62 v. 61.

67. The act of April 9, 1868, entitled "an act to provide for the investment of funds detained in the hands of executors, administrators, agents, attorneys, or officers, by reason of pending litigation." S. & S. 923; 65 v. 80.

68. The act of February 21, 1867, entitled "an act to amend section forty-seven of an act relative to wills, and to repeal former acts relating thereto." S. & S. 928; 64 v. 20.

69. The act of April 16, 1868, entitled "an act supplementary to an act entitled an act to amend section forty- S. & S. 930; 65 v. 90.

seven of an act relating to wills, and to repeal former acts relating thereto, passed February 21, 1867."

S. & S. 934; 63 v. 47. 70. The act of March 20, 1866, entitled "an act to amend section fifty-six of an act entitled an act relating to wills, and to repeal former acts relating thereto."

66 v. 4. 71. The act of January 15, 1869, entitled "an act to amend section sixty-five of an act entitled an act relating to wills, and the repeal of former acts relating thereto, passed May 3, 1852, and took effect June 1, 1852."

6; v. 69. 72. The act of April 30, 1869, entitled "an act to provide for the registry of births and deaths, and to repeal an act therein named."

66 v. 349. 73. The act of May 7, 1869, entitled "an act to amend section one hundred and forty of an act entitled an act to provide for the settlement of the estates of deceased persons, passed March 23, 1840."

67 v. 74. The act of February 10, 1870, entitled "an act to amend section one of an act passed May 5th, 1869, entitled an act to amend section one of an act regulating marriages, passed January 6th, 1824."

68 v. 6. 75. The act of January 5, 1871, entitled "an act to provide for the appointment of guardians of habitual drunkards, and prescribing the duties of such guardians."

68 v. 20. 76. The act of February 9, 1871, entitled "an act to amend the one hundred and forty-sixth section of an act entitled an act to provide for the settlement of the estates of deceased persons, passed March 23d, 1840."

68 v. 41. 77. The act of March 18, 1871, entitled "an act supplementary to an act regulating the mode of administering assignments in trust for the benefit of creditors, passed April 6, 1859."

68 v. 49. 78. The act of March 30, 1871, entitled "an act to amend section two of an act entitled an act to provide for the registry of births and deaths, passed April 30, 1869."

68 v. 57. 79. The act of April 12, 1871, entitled "an act to amend section three of the act passed May 1, 1854, entitled an act supplementary to the act entitled an act defining the jurisdiction and regulating the practice of probate courts, passed March 14, 1853, as amended by the act of February 28, 1866, and to repeal said last named act."

69 v. 22. 80. The act of March 7, 1872, entitled "an act to amen an act entitled an act requiring compensation for causing death by wrongful act, neglect, or default, passed March 25th, 1851."

69 v. 55. 81. The act of March 26, 1872, entitled "an act to amend section fourteen of an act entitled an act concerning the relation of guardian and ward, passed April 12, 1858, as amended by an act entitled an act to amend section fourteen of an act entitled an act concerning the relation of guardian and ward, passed April 12, 1858, passed March 31, 1864."

69 v. 71. 82. The act of April 10, 1872, entitled "an act supplementary to an act entitled an act to amend section one of

an act entitled an act to amend sections five and nine of an act entitled an act regulating the mode of administering assignments in trust for the benefit of creditors, passed April 6, 1859, passed April 18, 1861."

83. The act of April 23, 1872, entitled "an act supplementary to an act entitled an act defining the jurisdiction and regulating the practice of probate courts, passed March 14, 1853, amended February 20, 1866." 69 v. 105.

84. The act of April 27, 1872, entitled "an act to amend the twelfth section of an act entitled an act regulating the mode of administering assignments in trust for the benefit of creditors, passed April 6, 1859." 69 v. 172.

85. The act of March 10, 1873, entitled "an act to amend an act entitled an act supplementary to an act entitled an act defining the jurisdiction and regulating the practice of probate courts, passed March 4, 1853, amended February 20, 1866." 70 v. 56.

86. The act of April 2, 1873, entitled "an act to provide for the settlement of the accounts of trustees." 70 v. 100.

87. The act of March 16, 1874, entitled "an act to amend the eleventh section of an act entitled an act regulating the mode of administering assignments in trust for the benefit of creditors, passed and took effect April 6, 1859." 71 v. 28.

88. The act of April 16, 1874, entitled "an act to amend sections two and fourteen of an act regulating the mode of administering assignments in trust for the benefit of creditors, passed and took effect April 6th, 1859." 71 v. 73.

89. The act of April 16, 1874, entitled "an act to amend section one hundred and sixty-one of an act entitled an act to provide for the settlement of the estates of deceased persons, passed March 23, 1840." 71 v. 77.

90. The act of March 30, 1874, entitled "an act to amend the first section of an act entitled an act relating to wills, and the repeal of former acts relating thereto, passed May 3, 1852, took effect June 1, 1852." 72 v. 3.

91. The act of December 19, 1874, entitled "an act to amend section thirteen of an act defining the jurisdiction and regulating the practice of probate courts in the counties of Erie, Lucas, Richland, Holmes, Montgomery, Delaware, Franklin, Scioto, and Jefferson, passed April 12, 1858." 72 v. 9.

92. The act of March 30, 1875, entitled "an act to provide for the appointment of trustees for minors, idiots, lunatics, and imbeciles residing out of this state, and having property in the same, and for the repeal of certain acts therein named." 72 v. 161.

93. The act of March 30, 1875, entitled "an act supplementary to the act entitled an act to provide for the settlement of the estates of deceased persons." 72 v. 174.

94. The act of March 31st, 1876, entitled "an act supplementary to an act entitled an act regulating the mode of administering assignments in trust for the benefit of creditors, passed April 6, 1859." 73 v. 101.

73 v. 109. 95. The act of April 6th, 1876, entitled "an act to regulate the distribution of estates."

73 v. 146. 96. The act of April 8th, 1876, entitled "an act to repeal section seven and to amend section ten of an act regulating the mode of administering assignments in trust for the benefit of creditors, passed April 6, 1859."

73 v. 203. 97. The act of April 11th, 1876, entitled "an act to amend section three of an act to provide for the registry of births and deaths, passed March 18, took effect July 1st, 1867."

73 v. 207. 98. The act of April 11th, 1876, entitled "an act granting to guardians authority to improve the real estate of their wards, and to lease the same."

74 v. 91. 99. The act of April 19, 1877, entitled "an act supplementary to an act to provide for the settlement of the estates of deceased persons, passed March 23, 1840."

74 v. 110. 100. The act of April 24, 1877, entitled "an act to amend an act entitled an act supplementary to an act entitled an act regulating the mode of administering assignments in trust for the benefit of creditors, passed April 6, 1859, passed March 31, 1876."

74 v. 167. 101. The act of May 4, 1877, entitled "an act to enable executors and administrators to obtain funds arising from sale of real estate on partition to pay debts."

74 v. 201. 102. The act of May 7, 1877, entitled "an act relating to dower and the mode of fixing the value in money of dower estates."

74 v. 463. 103. The act of April 24, 1877, entitled "an act defining the jurisdiction of the probate court in the county of Mahoning, in minor criminal cases."

SEC. 2. This act shall take effect and be in force from September 1, 1878.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 7th, 1878.

[House Bill No. 488.]

AN ACT

To revise and consolidate the laws relating to procedure before justices of the peace and mayors.

Be it enacted by the General Assembly of the State of Ohio:

PART THIRD.

REMEDIAL.

TITLE III. BEFORE JUSTICES OF THE PEACE AND MAYORS.

CHAPTER 1. COMMENCEMENT OF ACTIONS, AND PROCESS.
CHAPTER 2. BILL OF PARTICULARS.
CHAPTER 3. CHANGE OF PLACE OF TRIAL.
CHAPTER 4. ADJOURNMENTS.
CHAPTER 5. EVIDENCE.
CHAPTER 6. TRIAL AND ITS INCIDENTS.
CHAPTER 7. JUDGMENTS.
CHAPTER 8. APPEALS.
CHAPTER 9. FORCIBLE ENTRY AND DETAINER.
CHAPTER 10. REPLEVIN.
CHAPTER 11. STRAYS AND DRIFTS.
CHAPTER 12. EXECUTION, AND ITS INCIDENTS.
CHAPTER 13. REVIVOR OF JUDGMENT.
CHAPTER 14. CONSTABLES, AND THEIR DUTIES.
CHAPTER 15. GENERAL PROVISIONS.
CHAPTER 16. REPEALS.

CHAPTER 1.

COMMENCEMENT OF ACTIONS, AND PROCESS.

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. Its service on corporations.
6. Where suit against railroad company brought, and how service made.
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8. Service in suit against foreign corporation.
9. Service when defendant is a minor.

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10. When parties must appear.

Section

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13. Undertaking of plaintiff.
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SECTION 1. Actions before justices of the peace are commenced by summons, or by the appearance and agreement of the parties without summons; in the former, the action is deemed commenced upon delivery of the writ to the constable to be served, and he shall note thereon the time of receiving the same; in the latter case, the action is deemed commenced at the time of docketing the case. [51 v. 179, § 11; S. & C. 767.]

When guardian necessary, how appointed.

SEC. 2. When a guardian to the suit is necessary, he must be appointed by the justice as follows: 1. If the infant be plaintiff, the appointment must be made before the summons is issued, upon the application of the infant, if he be of the age of fourteen years, or upward; if under that age, upon the application of some friend; the consent in writing of the guardian to be appointed, and to be responsible for costs if he fail in the action, must be filed with the justice. 2. If the infant be defendant, the guardian must be appointed before trial; it is the right of the infant to nominate his own guardian, if the infant be over fourteen years of age, and the proposed guardian be present and consent in writing to be appointed; otherwise, the justice may appoint any suitable person who gives such consent. [51 v. 179, § 12; S. & C. 767.]

The summons.

SEC. 3. The style of the summons shall be, "The state of Ohio, —— county:" it shall be dated the day it is issued, signed by the justice issuing the same, directed to the constable of the proper township (except in case a person be deputed to serve it, in which case it shall be directed to such person), must contain the name or names of the defendant or defendants, if known; if unknown, a description of him or them, and command the officer or person serving the same to summon the defendant or defendants to appear before such justice, at his office, in —— township, at a time specified therein, and must describe the plaintiff's cause of action in such general terms as to apprise the defendant of the nature of the claim against him; and there shall be indorsed on the writ the amount for which the plaintiff will take judgment, if the defendant fail to appear; if the defendant fail to appear, judgment shall not be rendered for a larger amount and the costs. [51 v. 179, § 13; S. & C. 767.]

Its service and return day generally.

SEC. 4. The summons must be returnable not more than twelve days from its date, and must, unless accompanied with an order to arrest, be served at least three days before the time of appearance, as follows:

1. By delivering a copy of the summons, with the indorsement thereon, (certified by the constable, or person serving the same, to be a true copy), to the defendant, or leaving the same at his usual place of residence.

2. An acknowledgment on the back of the summons, or the voluntary appearance of a defendant, is equivalent to service. [51 v. 179, § 14; S. & C. 767.]

SEC. 5. A summons against a corporation, except as here-

Its service on corporations.

inafter specially provided, may be served upon the president, mayor, chairman of the board of directors or trustees, or other chief officer; or, if its chief officer is not found in the county, upon its cashier, treasurer, secretary, clerk, or managing agent; or, if none of the aforesaid officers can be found, by a copy left at the office, or usual place of business of such corporation, with the person having charge thereof; but if the defendant be an incorporated river transportation company, whether organized under the laws of the state or another state, the service of a summons may be upon the master or other chief officer of any of its steamboats or other craft, or upon any of its authorized ticket or freight agents, at any port where it may transact business. [51 v. 179, § 15; S. & C. 767.]

Suits before justice against rail road company:

Process:

Upon whom, and when, and how service of process may be made:

SEC. 6. Suit may be brought before a justice of the peace against any railroad company, in the township in which the president of the company may reside, or in any township into or through which the road owned or leased by said company may be located, whether such company be foreign or created under the laws of this state, and whether the charter thereof prescribes the place where suit must be brought against it, or the manner or place of service of process thereon; and if the principal business office of the company is not kept in the township in which any such suit may be brought, it shall be the duty of the justice of the peace to issue a writ of summons against said company, directed to any constable in the township in which said suit may be brought. The constable shall, on receipt of such summons, forthwith serve the same personally upon the president of such company, if he be a resident of the county in which suit is brought, or by leaving a certified copy at his place of business, if the same be within such county: provided, that if the president of any such company shall not be a resident of, or have a place of business within, the county in which such suit shall be brought, it shall be lawful for the constable having such summons, to serve the same personally upon the person having charge of a ticket office, or on the person having charge of a freight depot, owned by or under the control of such company, if such ticket office or freight depot be situated within the county where such suit shall be brought; and, provided, further, that when such summons shall be served on either of such last described persons, it shall be done at least eight days prior to trial; but when served upon the president, as aforesaid, it may be served in accordance with the law for serving summons issued by justices of the peace: provided, that when the president of such company does not reside, and there is no such officer or depot in said county, then it shall be the duty of the justice of the peace to issue a writ of summons directed to the sheriff of the county where the principal business office of the company is located, with an indorsement on the back of the writ, of the name of the postoffice to which said writ shall be re-

When summons to be issued to sheriff, and how served and returned.

turned; and the sheriff, upon the receipt of said writ, shall forthwith serve the same personally upon the president, if found, or by leaving a copy at the business office of said company with the person having charge thereof, and immediately return the said writ to the justice of the peace issuing the same, by mail, directed to the postoffice named on the back of the writ. [48 v. 52, § 1; S. & C. 320: 63 v. 63, §§ 2, 3; S. & S. 118: 65 v. 116, § 66; S. & S. 542.]

Insurance company.

SEC. 7. Where the defendant is an incorporated insurance company, and the action is brought in a county in which there is an agency thereof, the service may be upon the chief officer of such agency. [51 v. 179, § 16; S. & C. 767.]

Foreign corporation.

SEC. 8. Where the defendant is a foreign corporation, having a managing agent in this state, the service may be upon such agent. [51 v. 179, § 17; S. & C. 767.]

Minors.

SEC. 9. When the defendant is a minor under the age of fourteen years, the service must be upon him and upon his guardian, or father; or, if neither of these can be found, then upon his mother, or the person having the care or control of the infant, or with whom he lives; if neither of these can be found, or if the minor be more than fourteen years of age, service on him alone shall be sufficient; the manner of service may be the same as in the case of adults. [51 v. 179, § 18; S. & C. 767.]

APPEARANCE.

Appearance.

SEC. 10. The parties are entitled to one hour in which to appear, after the time mentioned in the summons for appearance, but are not bound to remain longer than that time, unless both parties have appeared, and the justice being present, is engaged in the trial of another cause; in such case, the justice may postpone the time of appearance until the close of such trial. [51 v. 179, § 19; S. & C. 767.]

ARREST BEFORE JUDGMENT.

For what causes order of arrest issued, and the affidavit.

SEC. 11. An order for the arrest of the defendant in a civil action, shall be made by the justice of the peace before whom the same is brought, when there is filed in his office an affidavit of the plaintiff, his authorized agent or attorney, made before any person authorized by law to administer oaths, stating the nature of the plaintiff's claim, that it is just, the amount thereof as near as may be, and establishing one or more of the following particulars:

1. That the defendant has removed or begun to remove any of his property out of the county with intent to defraud his creditors.

2. That the defendant has begun to convert his property or any part thereof into money for the purpose of defrauding his creditors.

3. That he has property or rights in action which he fraudulently conceals.

4. That he has assigned, removed, or disposed of, or has begun to assign, remove, or dispose of his property, or any part thereof, with intent to defraud his creditors.

5. That the defendant fraudulently or criminally contracted the debt or incurred the obligation for which suit is about to be brought.

6. The affidavit shall also contain a statement of the facts claimed to justify the belief in the existence of one or more of the above particulars. [51 v. 179, § 20; S. & C. 767.]

When order may issue.

SEC. 12. The order of arrest may be made to accompany the summons, or at any time afterward before judgment. [51 v. 179, § 21; S. & C. 767.]

Undertaking of plaintiff.

SEC. 13. The order of arrest shall not be issued by a justice of the peace until there has been executed by the plaintiff, if a resident freeholder of the township where suit is brought, otherwise by one or more sufficient sureties of the plaintiff, a written undertaking, in not less than double the amount of the plaintiff's claim, as stated in the affidavit, to the effect, that the plaintiff shall pay the defendant all damages which he may sustain by reason of the arrest, if the order be wrongfully obtained. [51 v. 179, § 22; S. & C. 767.]

Order for arrest, what to contain, and to whom delivered.

SEC. 14. The order of arrest shall be addressed and delivered, with a copy of the affidavit, to a constable of the proper township; it shall state the names of the parties, the amount of the plaintiff's claim specified in the affidavit, be signed by the justice of the peace issuing it, and shall require the constable to arrest the defendant and bring him forthwith before said justice. [51 v. 179, § 23; S. & C. 767.]

The arrest.

SEC. 15. The officer receiving said order, shall execute the same by forthwith arresting the defendant and delivering to him a copy thereof, and of the affidavit; and the defendant so arrested, unless the claim of the plaintiff specified in the affidavit and costs of suit are paid, or unless discharged from custody by order of the plaintiff, shall be taken by such constable forthwith before the justice of the peace by whom said order of arrest was issued; and kept in custody until discharged by law. [51 v. 179, § 24; S. & C. 767.]

Proceedings after arrest.

SEC. 16. Upon the return of said order of arrest, executed in pursuance of the preceding section, the trial of said cause shall proceed, unless for good cause shown, upon the application of either party, or at the instance of the justice himself, the same shall be continued for any period, as is provided for in other cases before justices of the peace; and when the trial of said cause is continued for any period, the defendant, upon executing with one or more sufficient sureties, a written undertaking to the plaintiff in the premises, and to the acceptance of the justice, to the effect that if judgment shall he rendered in the action against the defendant, he will render himself amenable to the process o the court thereon, shall be discharged from custody: provided.

however, that in no case shall the defendant be detained in the custody of the officer when said continuance has been for more than forty-eight hours, unless said continuance has been made at the instance or with the consent of the defendant himself. [55 v. 25, § 25; S. & C. 775.]

ATTACHMENT.

Affidavit for attachment, what to contain.

SEC. 17. The plaintiff shall have an order of attachment against any property of the defendant (except as hereinafter provided) in a civil action before a justice of the peace, for the recovery of money, before or after the commencement thereof, when there is filed in his office an affidavit of the plaintiff, his agent, or attorney, showing the nature of the plaintiff's claim, that it is just, the amount the affiant believes the plaintiff ought to recover, and that the property about to be attached is not exempt from execution, and is not the personal earnings of the defendant for services rendered by the defendant within three months prior to the commencement of said action, or, if such earnings are sought to be attached, that they amount to more than one hundred and fifty dollars, and that only the excess over that amount is sought to be attached, or that the defendant is not the head or support of a family; and also the existence of some one, or more, of the following particulars:

1. That the defendant, or one of several defendants, is a corporation, having no officer upon whom a summons can be served, or place of doing business in the county, or is a non-resident of the county; or,

2. Has absconded with intent to defraud his creditors; or,

3. Has left the county of his residence to avoid the service of a summons; or,

4. So conceals himself that a summons cannot be served upon him; or,

5. Is about to remove his property, or a part thereof, out of the county, with intent to defraud his creditors; or,

6. Is about to convert his property, or a part thereof, into money, for the purpose of placing it beyond the reach of his creditors; or,

7. Has property, or rights of action, which he conceals; or,

8. Has assigned, removed, or disposed of, or is about to assign, remove, or dispose of his property, or a part thereof, with intent to defraud his creditors; or,

9. Fraudulently or criminally contracted the debt, or incurred the obligation, for which suit is about to be, or has been brought. When the defendant is a corporation, having no officer in the county upon whom a summons can be served, or place of doing business in the county, or is a non-resident of

the county, the attachment shall not be granted, unless the claim is for a debt or demand arising upon contract, judgment, or decree, and no attachment shall issue by virtue of this chapter against the personal earnings of any defendant for services rendered by such defendant, within three months before the commencement of the action or the issuing of the attachment, unless the defendant is not the head or support of a family, or unless the amount of such earnings exceeds one hundred and fifty dollars, and then only as to the excess over that amount. [59 v. 17, § 28; S. & S. 420.]

When undertaking must be given, and its condition.

SEC. 18. When the ground of attachment is, that the defendant is a foreign corporation, or a non-resident of the county, the order of attachment may be issued without an undertaking, but in all other cases, the order of attachment shall not be issued by the justice until there has been executed in his office, by one or more sufficient sureties of the plaintiff, to be approved by the justice, an undertaking, not less than double the amount of the plaintiff's claim, to the effect, that the plaintiff shall pay the defendant all damages which he may sustain by reason of the attachment, if the order be wrongfully obtained. [51 v. 179, § 29; S. & C. 767.]

The issuing, delivery, and command of the attachment.

SEC. 19. The order of attachment may be made to accompany the summons, or at any time afterward, before judgment; it shall be addressed and delivered to any constable of the proper township, and shall require him to attach the goods, chattels, stocks, or interests in stocks, rights, credits, moneys, and effects of the defendant in his county, not exempt by law from being applied to the payment of the plaintiff's claim, or so much thereof as will satisfy the plaintiff's claim, to be stated in the order as in the affidavit, and the probable costs of the action, not exceeding fifty dollars. [51 v. 179, § 30; S. & C. 767.]

Return day.

SEC. 20. The return day of the order of attachment, when issued at the commencement of the action, shall be the same as that of the summons; when issued afterward, it shall be executed and returned forthwith. [51 v. 179, § 31; S. & C. 767.]

How attachments executed.

SEC. 21. When there are several orders of attachment against the same defendant, in the hands of the same officer, they shall be executed in the order in which they were received by said officer; he shall go to the place where the defendant's property may be found, and there in the presence of two credible persons, declare that by virtue of said order, he attaches said property at the suit of such plaintiff; and the officer with two householders of the county, who shall be first sworn by the officer, shall make a true inventory and appraisement of all property attached, which shall be signed by the officer and said householders, and returned with the order; when the property can be come at, he shall take the same into his custody, and hold it subject to the order of the justice. [51 v. 179, § 32; S. & C. 767.]

How property discharged from attachment.

SEC. 22. The constable shall deliver the property attached to the person in whose possession it was found, upon the execution by such person, in the presence of the constable, of an undertaking to the plaintiff, with one or more sufficient sureties resident in the county, to the effect that the parties to the same are bound, in double the appraised value thereof, that the property or its appraised value in money shall be forthcoming to answer the judgment of the court in the action; but if it shall appear to the court that any part of said property has been lost or destroyed by unavoidable accident, the value thereof shall be remitted to the person or persons so bound. [51 v. 179, § 33; S. & C. 767.]

Inventory when two or more attachments:

SEC. 23. Different attachments of the same property may be made, and one inventory and appraisement shall be sufficient; the lien of the attachments shall be in the order in which they are served, and the subsequent attachments shall be served on the property, as in the hands of the officer, and subject to the prior attachments; the justice, who issued the attachment having the priority of lien, shall determine all questions as to the priority of liens on the property attached. [51 v. 179, § 34; S. & C. 767.]

Priority in such case.

How order served when accompanied with summons:

SEC. 24. If the order of attachment is made to accompany the summons, a copy thereof and the summons shall be served upon the defendant in the usual manner for the service of a summons, if the same can be done within the county; and when any property of the defendant has been taken under the order of attachment, and it shall appear that the summons issued in the action has not been, and cannot be served on the defendant in the county, in the manner prescribed by law, the justice of the peace shall continue the cause for a period not less than forty, nor more than sixty days; whereupon the plaintiff shall proceed for three consecutive weeks to publish in some newspaper printed in the county, or if none be printed therein, then in some newspaper of general circulation in said county, a notice, stating the names of the parties, the time when, by what justice of the peace, and for what sum said order was issued, and shall make proof of such publication to the justice; and, thereupon, said action shall be proceeded with, the same as if said summons had been duly served. [51 v. 179, § 35; S. & C. 767.]

Proceedings if summons can not be served.

When property to be sold immediately.

SEC. 25. When the cause is continued as provided for in the preceding section, and it shall appear that any of the property taken under the attachment is live stock, or is of a perishable nature, the justice may issue his order, directing the officer, having the custody thereof, to dispose of the same as upon execution; and the money realized therefrom shall be paid over to the justice and applied as other money realized from the sale of the property attached is applied. [51 v. 179, § 36; S. & C. 767.]

SEC. 26. When the plaintiff, his agent or attorney, shall make oath in writing, that he has good reason to, and does

Proceedings against garnishee.

believe that any person or corporation, to be named and within the county where the action is brought, has property of the defendant (describing the same), in his possession, if the officer cannot come at such property, he shall leave with such garnishee, a copy of the order of attachment, with a written notice, that he appear before the justice, at the return of the order of attachment and answer, as hereinafter provided. [51 v. 179, § 37; S. & C. 767.]

How garnishee served.

SEC. 27. The copy of the order and notice shall be served upon the garnishee, as follows: If he be a person, they shall be served upon him personally, or left at his usual place of residence; if a corporation, they shall be left with the president, or other head of the same, or the secretary, cashier, or managing agent thereof. [51 v. 179, § 38; S. & C. 767.]

His appearance and answer.

SEC. 28. The garnishee shall appear before the justice in accordance with the command of the notice, and shall answer, under oath, all questions put to him touching the property of every description and credits of the defendant, in his possession or under his control, and he shall disclose, truly, the amount owing by him to the defendant, whether due or not; and in the case of a corporation, any stock therein held by or for the benefit of the defendant, at or after the service of notice. [51 v. 179, § 39; S. & C. 767.]

Proceedings as to garnishee.

SEC. 29. A garnishee may pay the money owing to the defendant by him, to the constable having the order of attachment, or into the court; he shall be discharged from liability to the defendant, for any money so paid, not exceeding the plaintiff's claim; he shall not be subjected to costs beyond those caused by his resistance of the claim against him; and if he disclose the property in his hands, or the true amount owing by him, and deliver or pay the same according to the order of the court, he shall be allowed his costs. [51 v. 179, § 40; S. & C. 767.]

If he do not appear and answer.

SEC. 30. If the garnishee do not appear and answer, as required, the justice may proceed against him by attachment as for a contempt. [51 v. 179, § 41; S. & C. 767.]

If he do appear and answer.

SEC. 31. If the garnishee appear and answer, and it is discovered on his examination, that at or after the service of the order of attachment and notice upon him, he was possessed of any property of the defendant, or was indebted to him, the justice may order the delivery of such property, and the payment of the amount owing by the garnishee, into the court; or may permit the garnishee to retain the property or the amount owing, upon the execution of an undertaking to the plaintiff, by one or more sufficient sureties, to the effect, that the amount shall be paid, or the property forthcoming, as the court may direct. [51 v. 179, § 42; S. & C. 767.]

SEC. 32. If the garnishee fail to appear and answer, or if he appear and answer, and his disclosure is not satisfactory to the plaintiff; or if he fail to comply with the order of the justice to deliver the property and pay the money owing,

into court, or give the undertaking required in the preceding section, the plaintiff may proceed against him in an action, in his own name, as in other cases; and, thereupon, such proceedings may be had as in other actions, and judgment may be rendered in favor of the plaintiff, for the amount of the property and credits of every kind of the defendant in the possession of the garnishee, and for what shall appear to be owing by him to the defendant, and for the costs of the proceedings against the garnishee; if the plaintiff proceed against the garnishee by action, for the cause that his disclosure was unsatisfactory, unless it appear in the action that such disclosure was incomplete, the plaintiff shall pay the costs of such action; the judgment in this action may be enforced as judgments in other cases; when the claims of the plaintiffs in attachment are satisfied, the defendant in attachment may, on motion, be substituted as the plaintiff in judgment. [51 v. 179, § 43; S. & C. 767.]

On his failing to answer, or his answer being unsatisfactory.

SEC. 33. Final judgment shall not be rendered against the garnishee, until the action against the defendant in attachment has been determined; and if, in such action, judgment be rendered for the defendant in attachment, the garnishee shall be discharged, and recover costs; if the plaintiff shall recover against the defendant in attachment, and the garnishee shall deliver up all property, moneys, and credits of the defendant, in his possession, and pay all the moneys from him due as the court may order, the garnishee shall be discharged, and the costs of the proceedings against him shall be paid out of the property and moneys so surrendered, or as the court may think right and proper. [51 v. 179, § 44; S. & C. 767.]

When judgment may be rendered against garnishee, and when he may be discharged.

SEC. 34. If judgment be rendered in favor of the defendant in the original action, the attachment shall be discharged, and the property attached, or its proceeds shall be returned to him, unless the plaintiff shall, within a certain time, to be fixed by the justice, give an undertaking for an appeal to the court of common pleas, which time shall not exceed ten days, during which time, so fixed by the justice, the property shall not be returned to the defendant, and in case of appeal by either party, the attachment shall be continued in and determined by the court of common pleas in the same manner as though said attachment had been issued from said court of common pleas; when the plaintiff shall appeal, the undertaking shall be at least in double the amount of the appraised value of the property attached, and in addition to the conditions now provided by law for undertakings in appeals, shall contain a provision to pay defendant all damages sustained, if it shall be found in the court of common pleas that said attachment was wrongfully obtained. [54 v. 18, §§ 45, 2; S. & C. 779.]

When attachment shall be discharged, and condition of plaintiff's appeal.

SEC. 35. If judgment be rendered for the plaintiff, it shall be satisfied as follows: so much of the property remaining

How judgment in attachment satisfied:

in the hands of the officer, after applying the moneys arising from the sale of perishable property, and so much of the personal property, if any, whether held by legal or equitable title, as may be necessary to satisfy the judgment, shall be sold by order of the justice, under the same restrictions and regulations as if the same had been levied on by execution;

If not fully paid, how to proceed:

and the money arising therefrom, with the amount which may be recovered from the garnishee, shall be applied to satisfy the judgment and costs; if there be not enough to satisfy the same, the judgment shall stand, and execution may issue thereon, for the residue, in all respects as in other cases: any surplus of the attached property, or its proceeds, shall be returned to the defendant. [51 v. 179, § 46; S. & C. 767.]

Return of property when judgment satisfied.

Order to reseize the property.

SEC. 36. The justice may order the constable to repossess himself, for the purpose of selling it, of any of the attached property, which may have passed out of his hands without having been sold, or converted into money; and the constable shall, under such order, have the same power to take the property, as he would have under an order of attachment. [51 v. 179, § 47; S. & C. 767.]

Trial of the right of property attached.

SEC. 37. If any of the property which has been attached, be claimed by any person other than the defendant, the claimant may have the validity of such claim tried, and such proceedings must be had thereon, with like effect, as in case the property had been seized upon execution issued by the justice and claimed by a third person. [51 v. 179, § 48; S. & C. 767.]

Who to determine priorities.

SEC. 38 When several attachments are executed on the same property, or the same persons are made garnishees, the justice, issuing the first order, served on the motion of any of the plaintiffs, may determine the amounts and priorities of the several attachments, and the proceeds shall be applied accordingly. [51 v. 179, § 49; S. & C. 767.]

Officer's return, etc., on orders, etc.

SEC. 39. The officer shall return upon every order of attachment what he had done under it; the return must show the property attached, and the time it was attached; when garnishees are served, their names and the time each was served must be stated; the officer shall also return with the order all undertakings given under it. [51 v. 179, § 50; S. & C. 767.]

Effect of service as a lien.

SEC. 40. An order of attachment binds the property attached from the time of service, and the garnishee shall stand liable to the plaintiff in attachment for all property, moneys, and credits in his hands, or due from him to the defendant, from the time he is served with the written notice to appear; but when property is attached in the hands of a consignee, or other person having a prior lien, his liens thereon shall not be affected by the attachment. [51 v. 179, § 51; S. & C. 767.]

SEC. 41. If the defendant, or other person in his behalf at any time before judgment, cause an undertaking to be

executed to the plaintiff by one or more sureties resident in the county, to be approved by the justice, in double the amount of the plaintiff's claim, stated in his affidavit, to the effect that the defendant shall perform the judgment of the justice, the attachment in such action shall be discharged, and restitution made of any property taken under it, or the proceeds thereof; such undertaking shall also discharge the liability of a garnishee in such action, for any property of the defendant in his hands. [51 v. 179, § 52; S. & C. 767.]

How attachment may be discharged on giving bond.

SEC. 42. If in any case where an order of attachment has been issued by a justice of the peace, it shall appear from the return of the officer, and if there is a garnishee in the case, then also from the examination of the garnishee, that no property, moneys, rights, credits, or effects of the defendant have been taken under the attachment, but that the defendant is the owner of an interest in real estate in the county, the justice before whom said action is pending shall, at the request of the plaintiff, forthwith certify his proceedings to the court of common pleas of the proper county, and thereupon the clerk of the court of common pleas shall docket said cause, and the action shall be proceeded with in all respects as if the same had originated therein, except that in all actions under this section, for any sum of which justices of the peace have exclusive original jurisdiction, if the defendant be a non-resident of the county, such non-residence shall be a ground of attachment in the court of common pleas. [74 v. 39, § 53.]

If returns show no personal property or credits but real estate, the case to be certified to common pleas.

ATTACHMENT IN CERTAIN CASES.

SEC. 43. When a debtor has sold, conveyed, or otherwise disposed of his property, with the fraudulent intent to cheat, or defraud his creditors, or to hinder, or delay them in the collection of their debts, or is about to make such sale, conveyance, or disposition of his property with such fraudulent intent, or is about to remove his property, or a material part thereof, with the intent, or to the effect of cheating, or defrauding his creditors, or hindering, or delaying them in the collection of their debts, a creditor may bring an action on his claim before it is due, and have an attachment against the property of the debtor. [64 v. 72, § 1; S. & S. 421.]

Property conveyed for purpose of defrauding creditors may be attached before debt due.

SEC. 44. The attachment authorized by the last section, may be granted by the justice of the peace before whom the action is brought; but before such action shall be brought, or such attachment shall be granted, the plaintiff, his agent, or attorney, shall make an oath, in writing, showing the nature and amount of the plaintiff's claim, that it is just, when the same shall become due, and the existence of some one of of the grounds for the attachment enumerated in the preceding section. [64 v. 72, § 2; S. & S. 421.]

When attachment may be granted in such case.

SEC. 45. In such action application for an attachment

Effect on suit of not granting an action.

must be made, and if the justice refuse to grant an order of attachment, the action shall be dismissed, but without prejudice to a future action. [64 v. 72, § 3; S. & S. 421.]

Amount of claim must be specified in the order.

SEC. 46. The order of the justice granting the attachment, shall specify the amount for which it is allowed, not exceeding the sum sufficient to satisfy the plaintiff's claim and the probable costs of the action. [64 v. 72, § 4; S. & S. 421.]

When bond required and when not.

SEC. 47. The order of attachment shall not be issued by the justice until there has been executed in his office such undertaking on the part of the plaintiff, as is provided for in other cases of attachment, except when in other cases an undertaking is dispensed with. [64 v. 72, § 5; S. & S. 421.]

When judgment may be rendered.

SEC. 48. The plaintiff in such action shall not have judgment on his claim before it is due, but the proceedings on attachment may be conducted without delay. [64 v. 72, § 6; S. & S. 421.]

And proceedings thereon.

SEC. 49. The proceedings in other cases of attachment, shall, so far as they are applicable, regulate the attachment authorized by this subdivision of this chapter. [64 v. 72, § 7; S. & S. 421.]

MOTION TO DISCHARGE ATTACHMENT.

When motion may be made.

SEC. 50. The defendant may, at any time before judgment, upon reasonable notice to the plaintiff, move to discharge an attachment as to the whole or any part of the property attached. [54 v. 29, § 228; S. & C. 940.]

When affidavits to be used on hearing.

SEC. 51. If the motion be made upon affidavit on the part of the defendant, or papers and evidence in the case, but not otherwise, the plaintiff may oppose the same by affidavit, or other evidence in addition to that on which the order of attachment was made. [51 v. 57, § 229; S. & C. 940.]

Error on discharging or refusing to discharge attachment.

SEC. 52. Any party to a suit affected by an order discharging, or refusing to discharge an order of attachment, shall be entitled to file a petition in error in the court of common pleas to reverse, vacate, or modify the same, and when necessary, a bill of exceptions may be taken and signed for this purpose. [54 v. 26, § 1; S. & C. 1154.]

When attachment discharged, the party affected thereby to file his petition in error within a given time; and notice thereof.

SEC. 53. When an order discharging an order of attachment is made, and any person affected thereby shall except thereto, the justice shall fix a number of days, not exceeding ten, in which such party may file his petition in error, during which time the property attached shall be held by the constable, or other officer, during which period the petition in error shall be filed, and the party filing the same shall give an undertaking to the adverse party, with surety to be approved by the clerk of the court, in double the amount of the appraised value of the property attached, conditioned to pay said adverse party all damages sustained by such party in consequence of the filing of said petition

in error, in the event that said order of attachment shall be discharged by the court in which said petition in error is filed; and on such undertaking being filed, notice in writing shall forthwith be given by the clerk through the plaintiff in error to the justice, and if such notice be so given within the time limited by the justice, the justice or constable shall continue to hold the property attached subject to the further order of the court. [58 v. 14, § 2; S. & S. 593.]

CHAPTER 2.

BILL OF PARTICULARS.

SECTION
1. When and by whom bill of particulars to be filed.
2. Its requisites.
3. Amendments of same.

In what cases to file.

SECTION. 1. In all cases before a justice, the plaintiff, his agent, or attorney, shall file with such justice a bill of the particulars of his demand; and the defendant, if required by the plaintiff, his agent, or attorney, shall file a like bill of the particulars he may claim as a set-off; and the evidence on the trial shall be confined to the items set forth in said bills. *A change of the place of trial shall be allowed.* [51 v. 179, § 54; S. & C. 767.]

Requisite.

SEC. 2. The bill of particulars must state, in a plain and direct manner, the facts constituting the cause of action, or the claim to be set off; and if either party omit to set up in his bill of particulars any item which lawfully could be made part of the cause of action, set-off, or counterclaim, the party making such omission shall not recover costs of the adverse party in any subsequent action thereon; but this provision shall not apply to any item which may be stricken out by the justice, or withdrawn by either party with his consent. [51 v. 179, § 55; S. & C. 767.]

Amendment.

SEC. 3. The bill of particulars may be amended at any time before the trial, or during the trial, or upon appeal, to supply any deficiency, or omission in the items, when, by such amendment, substantial justice will be promoted; if the amendment be made at the time of, or during the trial, and it be made to appear to the satisfaction of the justice by oath, that an adjournment is necessary to the adverse party, in consequence of such amendment, an adjournment must be granted; the justice may also, in his discretion, require, as a condition of an amendment, the payment of costs to the adverse party, to be fixed by the justice; but such payment can not be required, unless an adjournment is made necessary by the amendment. [51 v. 179, § 56; S. & C. 767.]

CHAPTER 3.

CHANGE OF PLACE OF TRIAL.

SECTION
1. For what and how change of place of trial granted.
2. When to another justice or another township.
3. Papers, etc., to be transmitted.
4. Condition of such change as to costs.
5. When applied for by plaintiff, and when applied for by defendant.

For what, and how.

SECTION 1. If on the return of process, or at any time before trial shall have commenced, it shall be made satisfactorily to appear to the justice of the peace before whom any cause is instituted, or is pending for trial, by the affidavit of either of the parties in the case:

1. That such justice is a material witness for either party; or,

2. If a jury be demanded by the adverse party, then that he can not, as he verily believes, have a fair and impartial trial in such township, on account of the bias or prejudice of the citizens thereof, [a change of the place of trial shall be allowed.] [51 v. 179, § 57; S. & C. 767.]

When to another justice, or another township.

SEC. 2. If the place of the trial be changed on account of the justice being a material witness in the cause, such cause shall be transferred for trial before some other justice of the peace of the same township, if there be one there legally competent to try such cause; if there be no such justice within such township, or if such change be granted on account of the bias or prejudice of the citizens of such township against such party, or because the adverse party has an undue advantage over him therein, the case shall be taken to some justice in an adjoining township of the same county. [51 v. 179, § 58; S. & C. 767.]

Papers, etc., to be transmitted.

SEC. 3. The justice granting such change, shall deliver or transmit the papers in the cause, together with a certified transcript of the proceedings before him, to the justice to whom such change may be granted, who shall proceed therein, and have the same jurisdiction, powers, and duties, in all respects whatever, as if such suit had been originally instituted before him. [51 v. 179, § 59; S. & C. 767.]

Condition of such change as to costs.

SEC. 4. Before any such change shall be allowed, the costs, as specified in the next following section, shall be paid by the party applying for such change, or he shall have confessed a judgment therefor before the justice granting the change. [51 v. 179, § 60; S. & C. 767.]

When applied for by plaintiff, and when by defendant.

SEC. 5. When such change is at the instance of the plaintiff, he shall be taxed with all the costs which have accrued, and which shall accrue in the cause, until such transcript and papers shall be delivered to the justice to whom such cause is removed for trial; and when, on the application of the defendant, he shall be taxed with the costs which have accrued for issuing subpœnas for witnesses

and service thereof, witness fees, and costs of the justice for transferring the cause to the docket of the other justice. [51 v. 179, § 61; S. & C. 767.]

CHAPTER 4.

ADJOURNMENTS.

SECTION
1. By justice, forty-eight hours to eight days.
2. On motion of party, thirty days.
3. When for ninety days.

By justice.

SECTION 1. Upon the return day, if a jury be required, or if the justice be actually engaged in other official business, he may adjourn the trial without the consent of either party, as follows:

When for forty-eight hours:

1. Where a party is in attendance, who is not a resident of the county, or where the defendant is in attendance under arrest, the adjournment not to exceed forty-eight hours; and the defendant, if under arrest, to continue in custody.

Or eight days.

2. In other cases, not to exceed eight days, unless by consent of parties; if the trial be not adjourned, it must take place immediately upon the return of the summons. [51 v. 179, § 62; S. & C. 767.]

On motion of party, thirty days:

SEC. 2. The trial may be adjourned upon the application of either party, without the consent of the other, for a period not exceeding thirty days, as follows: The party asking the adjournment must, if required by his adversary, prove by his own oath, or otherwise, that he can not, for want of material testimony, which he expects to procure, safely proceed to trial. [51 v. 179, § 63; S. & C. 767.]

How cause therefor shown.

Adjournment for ninety days.

SEC. 3. An adjournment may be had either at the return day, or any subsequent time to which the cause may stand adjourned, on the application of either party, for a period longer than thirty days, but not to exceed ninety days from the time of the return of the summons, upon compliance with the provisions of the preceding section, and upon proof, by the oath of the party or otherwise to the satisfaction of the justice, that such party can not be ready for trial before the time to which he desires an adjournment for the want of material evidence, describing it, that the delay has not been made necessary by any act or negligence on his part since the action was commenced, and that he expects to procure the evidence at the time stated by him. [51 v. 179, § 64; S. & C. 767.]

CHAPTER 5.

EVIDENCE.

SECTION
1. In what case justice may issue subpœna.
2. How subpœna served.
3. None but officers entitled to fees for serving.
4. Costs of witness, by whom to be paid if witness not used.
5. When warrant for arrest of witness to be issued.
6. Punishment of witness for contempt, etc.
7. And liability to party.
8. Depositions, in what cases taken and used.

In what case justice may issue subpœnas.

SECTION 1. Any justice may issue subpœnas to compel the attendance of witnesses to give evidence on any trial pending before himself, or for the purpose of taking depositions, or to perpetuate testimony. [51 v. 179, § 65; S. & C. 767.]

How subpœna served.

SEC. 2. A subpœna may be served by a constable or any other person, and shall be served by reading the same or stating the contents thereof to the witness, or by leaving a copy thereof at his usual place of residence. [51 v. 179, § 66; S. & C. 767.]

None but officer entitled to fees for serving.

SEC. 3. When not served by a constable, or some person deputed for that person by a justice, no fees shall be charged in the suit for serving it. [51 v. 179, § 67; S. & C. 767.]

Costs of witness, by whom to be paid if witness not used.

SEC. 4. If any witness, having been subpœnaed, attend and be not examined by either party, the costs of such witness shall be paid by the party ordering the subpœna unless the adverse party, by confessing the matter or otherwise, render unnecessary the examination of such witness. [51 v. 179, § 68; S. & C. 767.]

When warrant for arrest of witness to be issued.

SEC. 5. Whenever it shall appear to the satisfaction of a justice, by proof made before him, that any person has been duly served with a subpœna to appear and give testimony before him in any matter in which he has authority to require such witness to appear and testify, that his testimony is material, and that he refuses or neglects to attend as such witness in conformity with such subpœna, the justice shall issue a warrant to arrest the delinquent for the purpose of compelling his attendance and punishing his disobedience. [51 v. 179, § 69; S. & C. 767.]

Punishment of witness for contempt, etc.:

SEC. 6. When a person arrested is brought before the justice, or when a person in attendance refuses to testify as a witness, and no valid excuse be shown, the justice may impose a fine on him not exceeding five dollars; an entry of such fine, stating the reason therefor, must be made by the justice in his docket, and thereupon shall have the effect of a judgment in favor of the state of Ohio against the delinquent, and be enforced against his person or property. [51 v. 179, § 70; S. & C. 767.]

SEC. 7. Every person subpœnaed as aforesaid, and neglecting to appear or refusing to testify, shall also be liable

e party in whose behalf he shall have been subpœnaed, all damages which such party shall sustain by reason of ch delinquency. [51 v. 179, § 71; S. & C. 767.] And liability to party.

SEC. 8. Depositions may be taken to be read in any cause nding before a justice of the peace, in like manner and bject to the same restrictions and rules of law as in cases nding in the court of common pleas. [51 v. 179, § 72; S. C. 767.] Depositions: in what cases taken and used.

CHAPTER 6.

TRIAL, AND ITS INCIDENTS.

TION
When trial to be if jury not demanded.

SECTION
2. Appearance and trial without process.

JURY.

Jury may be demanded.
Adjournment when jury demanded.
How juries made up.
Summons for, and its form.
Service of same.
Liability of jurors for not serving, etc.
Constable shall attend court; talesmen.
Jurors to attend on adjournment.
Objection to juror, how tried.
Oath of jury.
13. Their duty.
14. Verdict, its entry on docket.
15. Proceedings when jury can not agree.
16. When verdict may be set aside.
17. Proceedings in such case.
18. What cases may be appealed.
19. Who to pay costs on appeal and attorney's fee in certain cases.
20. Fees of jury, and how paid.
21. Bill of exceptions on trial before justice.

ARBITRATION.

Suit may be referred to arbitrators, and proceedings in such case.
The award, and judgment and execution thereon.
How, and for what such judgment may be set aside.
25. When the justice may set aside award.
26. Appeal from such judgment.
27. If common pleas satisfied on appeal that award was unduly obtained, case to be heard.
28. Otherwise judgment to be entered on award.

TRIAL OF RIGHT OF PROPERTY LEVIED ON OR ATTACHED.

Service of notice of time and place of trial.
The trial, judgment, etc.
31. Judgment, and its effect on right of property levied on or attached.

CTION 1. At the time appointed for trial, if no jury l have been demanded by either party, the justice shall eed to try the action, shall hear the proofs, and deter- e the cause according to law and the right. [51 v. 179, ; S. & C. 767.] When trial to be, if jury not demanded.

c. 2. When parties agree to enter, without process, be- a justice, any action of which such justice has cogni-

Appearance and trial without process.

zance, such justice shall enter the same on his docket, and proceed to trial, judgment, and execution, in all respects in the same manner as if summons had been issued, served, and returned. [51 v. 179, § 74; S. & C. 767.]

JURY.

Jury may be demanded.

SEC. 3. In all civil actions after the appearance of the defendant, and before the court shall proceed to inquire into the merits of the cause, either party may demand a jury to try the action, which shall be composed of six good and lawful men having the qualifications of electors, unless the parties shall agree on a less number. [73 v. 14, § 75.]

Adjournment when jury demanded.

SEC. 4. When a jury is demanded, the trial of a cause must be adjourned until a time fixed for the return of the jury; if neither party desire an adjournment, the time must be determined by the justice, and must be on the same day, or within the next two days; the jury must be immediately selected as herein provided. [51 v. 179, § 76; S. & C. 767.]

How juries made up.

SEC. 5. The justice shall write in a panel the names of eighteen persons, citizens of the township, or if the action be one in which the jurisdiction is not limited to the township, then citizens of the county, from which the defendant, his agent, or attorney, shall strike one name, the plaintiff, his agent, or attorney one, and so alternately, until each shall have stricken six names, and the remaining six shall constitute the jury to try such case, and if either party neglect or refuse to aid in striking the jury as aforesaid, the justice shall strike the same in behalf of such party. [73 v. 14, § 77.]

Summons for, and its form.

SEC. 6. The justice thereupon shall issue a summons for the jury, in which the following form shall be observed in substance, as near as practicable:

The state of Ohio, ——— county:

To ———, constable of ——— township:

You are hereby commanded to summon ———

to appear before me at ———, in said township, on the —— day of ———, A.D. ——, at —— o'clock in the —— noon, to serve as a juror in a case pending before me, then and there to be tried. And this they shall in nowise omit.

And have you then and there this writ, with your doings thereon.

Given under my hand this —— day of ———, A.D. ——

———,

Justice of the Peace.

[51 v. 179, § 78; S. & C. 767.]

Service of summons.

SEC. 7. The constable shall serve such summons by personal service thereof, and return the same, indorsed with the names of the persons summoned, at the time appointed for the trial of the cause. [51 v. 179, § 79; S. & C. 767.]

Liability of jurors for not attending, etc.

SEC. 8. Jurors, for neglecting, or refusing to attend when properly summoned, or refusing to serve when in attendance, shall be liable to the like penalty, and be proceeded

against in the same manner as witnesses who fail to attend, or refuse to testify. [51 v. 179, § 80; S. & C. 767.]

Constable shall attend court. Talesmen.

SEC. 9. The constable shall be in attendance on the court at and during the progress of the trial; and if, from challenge, or other cause, the panel shall not be full, he may fill the same in the same manner as is done by the sheriff in the court of common pleas. [51 v. 179, § 81; S. & C. 767.]

Jurors to attend on adjournment.

SEC. 10. When a jury shall be in attendance, and the cause shall be continued, the jurors must attend at the time and place appointed for trial without further notice. [51 v. 179, § 82; S. & C. 767.]

Objections to juror, how tried.

SEC. 11. If either party object to the competency of a juror, the question thereon must be tried in a summary manner by the justice, who may examine the juror, or other witness under oath. [51 v. 179, § 83; S. & C. 767.]

Oath of jury.

SEC. 12. The justice shall administer an oath to the jury, well and truly to try the matter in difference between the parties, and a true verdict to give according to the evidence. [51 v. 179, § 84; S. & C. 767.]

Their duty.

SEC. 13. After the jury shall have been sworn, they shall sit together, and hear proofs and allegations of the parties; and, after hearing the same, shall be kept together in some convenient place, under the charge of a constable, until they have agreed upon their verdict, or shall be discharged by the justice. [51 v. 179, § 85; S. & C. 767.]

Verdict; its entry on docket.

SEC. 14. When the jury shall have agreed upon their verdict, they shall deliver it to the justice publicly, who shall enter it upon his docket. [51 v. 179, § 86; S. & C. 767.]

Proceedings when jury can not agree.

SEC. 15. Whenever the justice shall be satisfied that a jury sworn in any cause before him can not agree in their verdict, after having consulted upon it a reasonable time, he may discharge them, and continue the cause, and may, if required by either party, proceed to strike another jury, as hereinbefore provided; the cause shall be continued to such time as the justice thinks reasonable, unless the parties or their attorneys agree on a longer or shorter time, or unless they may agree that the justice may render judgment on the evidence already heard before him. [51 v. 179, § 87; S. & C. 767.]

When verdict may be set aside.

SEC. 16. It shall be lawful for the justice before whom a cause has been tried, on motion, and being satisfied that the verdict was obtained by fraud, partiality, or undue means, at any time within four days after the entering of judgment, to grant a new trial, and he shall set a time for the new trial, of which the opposite party shall have at least three days' notice. [51 v. 179, § 88; S. & C. 767.]

Proceedings in such case.

SEC. 17. The opposite party shall also have a reasonable notice of such motion for a new trial, if the same is not made on the day of the former trial, and in the presence of such party; such notices to be given by the applying party; if the new trial shall be granted, or the jury be unable to

agree, the proceedings shall be, in all respects, as upon the return of the summons. [51 v. 179, § 89; S. & C. 767.]

What cases may be appealed.

SEC. 18. If either the plaintiff or defendant, in his bill of particulars, claim more than twenty dollars, the case may be appealed to the court of common pleas, but if neither party demand a greater sum than twenty dollars, and the case is tried by a jury, there shall be no appeal. [73 v. 14, § 90.]

Who to pay costs of appeal.

Attorney fee.

SEC. 19. If, on appeal by the plaintiff from a judgment in his favor, he shall not recover a larger sum than twenty dollars, exclusive of interest since the rendition of the judgment before the justice, he shall be adjudged to pay all costs in the court of common pleas (including a fee of five dollars for the defendant's attorney), and if the defendant shall demand a set-off or counterclaim, or both, greater than twenty dollars, and he appeal from a judgment rendered in his favor, and do not recover twenty dollars, he shall in like manner pay all costs in the appellate court, including a like fee to the plaintiff's attorney. [73 v. 14, § 91.]

Fees of jury, and how paid.

SEC. 20. Upon the verdict being delivered to the justice, and before judgment rendered thereon, each juror shall be entitled to receive fifty cents at the hands of the successful party, which shall be taxed in the costs against his adversary: when the jury shall not be able to agree upon a verdict, the same compensation shall be paid them by the party calling the jury, and the same shall be taxed in the cost bill against the losing party. [51 v. 179, § 92; S. & C. 767.]

Bill of exceptions on trial before justice.

SEC. 21. In all cases before a justice of the peace, whether tried by a jury or by the justice, either party shall have the right to except to the opinion of the justice upon any question of law arising during the trial of the cause; and when either party shall allege such exception, it shall be the duty of the justice to sign and seal a bill containing such exceptions, if truly alleged, with the point decided, so that the same may be made part of the record in the cause; and whenever either party during the trial shall require time to prepare his bill of exceptions, the justice shall appoint a time when the same shall be settled and signed, not more than five days from the day of trial. [66 v. 7, § 93.]

ARBITRATIONS.

Suit may be referred to arbitrators, and proceedings in such case.

SEC. 22. At any time before trial and judgment rendered, the plaintiff and defendant consenting thereto, may have the cause submitted to the arbitrament of three disinterested men, who shall be chosen by the parties; and if the arbitrators be present, they shall hear and determine the cause on oath, to be administered by the justice; but if the persons chosen as arbitrators be not present, the justice shall issue a summons for them to attend at the time and place appointed for the trial, which shall be served by any constable, or the parties, as they may agree: the fees of

arbitrators shall be the same as that paid to jurors. [51 v. 179, § 94; S. & C. 767.]

The award and judgment, and execution thereon.

SEC. 23. When the arbitrators shall convene and be qualified, they shall proceed to hear and determine the cause, and make out their award in writing, which shall be valid when signed by any two of them, and return the same to the justice; who shall thereupon enter such award on his docket, and thereon render judgment and issue execution, as in other cases. [51 v. 179, § 95; S. & C. 767.]

How and for what such judgment may be set aside.

SEC. 24. Every judgment rendered on such award shall conclude the rights of the parties thereto, unless it shall be made to appear to the justice of the peace who rendered such judgment, and within ten days from the rendition of the same, or to the court of common pleas, on appeal, that such award was obtained by fraud, corruption, or other undue means. [51 v. 179, § 96; S. & C. 767.]

When the justice may set aside award.

SEC. 25. Whenever satisfactory proof shall be adduced before such justice, within the period aforesaid, that such award was obtained by fraud, corruption, or other undue means, it shall be competent for such justice to set aside such award and his judgment thereon rendered, and thereupon proceed to such final trial and judgment, as if such award had never been made. [51 v. 179, § 97; S. &. C. 767.]

Appeal from such judgment.

SEC. 26. But no appeal shall be allowed to the court of common pleas, from a judgment of a justice of the peace rendered on an award, unless the party praying such appeal shall file with such justice an affidavit, therein stating that he or she does verily believe that such award was obtained by fraud, corruption, or other undue means. [51 v. 179, § 98; S. & C. 767.]

If common pleas satisfied, on appeal, that award was unduly obtained, case to be heard.

SEC. 27. And if, on appeal from the judgment of a justice rendered on any such award, the court of common pleas shall be satisfied that the award was obtained by fraud, corruption, or other undue means, such court shall set aside the award, and proceed to hear and determine the cause on the merits, as in other cases of appeal. [51 v. 179, § 99; S. & C. 767.]

Otherwise judgment to be entered on award.

SEC. 28. But if the said court shall be of opinion that the award was not obtained by fraud, corruption, or other undue means, they shall render judgment thereon, and for the costs of suit, and award execution as in other cases. [51 v. 179, § 100; S. & C. 767.]

TRIAL OF THE RIGHT OF PROPERTY LEVIED ON OR ATTACHED.

Service of notice of time and place of trial.

SEC. 29. When a constable shall levy on or attach property claimed by any person or persons other than the party against whom the execution or attachment issued, the claimant or claimants shall give three days' notice in writing, to the plaintiff or his agent, or if not found within the county, then such notice shall be served by leaving a copy thereof at his usual place of abode in such county, of the

time and place of the trial of the right to such property, which trial shall be had before some justice of the county, at least one day prior to the time appointed for the sale of such property. [66 v. 42, § 101.]

The trial, etc.

SEC. 30. If, on the trial, the justice shall be satisfied from the proof that the property, or any part thereof, belongs to the claimant or claimants, such justice shall render judgment against the party in whose favor such execution or attachment issued for the costs, and issue execution therefor, and shall, moreover, give a written order to the constable who levied on, or who may be charged with the duty of selling such property, directing him to restore the same, or so much thereof as may have been found to belong to such claimant or claimants. [51 v. 179, § 102; S. & C. 767.]

Judgment and its effect on right of property levied on or attached.

SEC. 31. If the claimant or claimants fail to establish his or their right to such property, and to every part thereof, the justice shall render judgment against such claimant or claimants, for the costs that have accrued on account of such trial, and issue execution therefor; and in no case shall the constable be liable to the claimant or claimants for the property so taken. [63 v. 42, § 103; S. & S. 413.]

CHAPTER 7.

JUDGMENTS.

SECTION
1. Non-suit.
2. Proceedings on default of appearance: proofs, etc.
3. Setting aside judgment rendered in absence of defendant.
4. When judgment must be entered.
5. Proceedings when sum due exceeds jurisdiction.
6. When judgment may be allowed on offer, and effect as to costs.
7. Statement in judgment that defendant is subject to arrest on it.

Non-suit.

SECTION 1. Judgment, that the action be dismissed without prejudice to a new action, may be entered with costs, in the following cases:

1. When the plaintiff voluntarily dismisses the action before it is finally submitted.

2. When he fails to appear at the time specified in the summons, or upon adjournment, or within one hour thereafter.

3. When it is objected at the trial and appears by the evidence that the action is brought in the wrong township. [51 v. 179, § 104; S. & C. 767.]

Proceedings on default of appearance: proofs, etc.

SEC. 2. If either party fail to appear at the return day of the summons, or fail to attend at the time to which a trial has been adjourned, or fail to make the necessary bill of particulars, or fail in the proofs, the cause may proceed at the request of the adverse party, and in all cases where a

set-off or counter-claim has been filed before the dismissal of the cause by the plaintiff, the defendant shall have the right of proceeding to the trial of his claim, although the plaintiff may have dismissed his action. In no case shall it be necessary to prove the execution of any bond, promissory note, bill of exchange or contract, or other written instrument, or any indorsement thereon, upon which suit is brought, or set-off or counter-claim based, unless the party sought to be charged as the maker, acceptor, or indorser of such bond, promissory note, or bill of exchange, shall make and file with the justice of the peace before whom the suit is pending, an affidavit that such instrument of writing was not made, given, subscribed, accepted, or indorsed by him. [53 v. 21, § 105; S. & C. 787.]

Setting aside judgment rendered in the absence of defendant.

SEC. 3. When judgment shall have been rendered against a defendant in his absence, the same may be set aside by the justice upon the following conditions:

1. That his motion be made within ten days after such judgment was entered, which motion shall be in writing, and sworn to by the defendant, his agent or attorney, setting forth a good and sufficient reason for the absence of the defendant.

2. That he pay or confess judgment for the costs awarded against him.

3. That he notify in writing the opposite party, his agent or attorney, or cause it to be done, of the opening of such judgment, and of the time and place of trial, at least five days before the time, if the party reside in the county; and if he be not a resident of the county, by leaving a written notice thereof at the office of the justice ten days before the trial, provided that the judgment shall not be set aside more than once on account of the absence of the defendant. [54 v. 107, § 106; S. & C. 788.]

When judgment must be entered.

SEC. 4. Upon a verdict the justice must immediately render judgment accordingly. When the trial is by the justice, judgment must be entered immediately after the close of the trial, if the defendant has been arrested or his property attached; in other cases, it must be entered either at the close of the trial, or if the justice then desire further time to consider, on or by the fourth day thereafter, both days inclusive. [51 v. 179, § 107; S. & C. 767.]

Proceedings when sum due exceeds jurisdiction.

SEC. 5. When the amount due to either party exceeds the sum for which the justice is authorized to enter judgment, such party may remit the excess, and judgment may be entered for the residue. A defendant need not remit such excess, and may withhold setting the same off, and a recovery for the amount set off and allowed, or any part thereof, shall not be a bar to his subsequent action for the amount withheld. [51 v. 179, § 108; S. & C. 767.]

SEC. 6. If the defendant, any time before trial, offer in writing to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment

When judgment may be allowed on offer, and effect as to costs, etc.

therefor with the costs then accrued; but if he do not accept such offer before the trial and fail to recover, in the action, a sum greater than the offer, he can not recover costs accrued after the offer, but costs must be adjudged against him; but the offer and failure to accept it, can not be given in evidence to affect the recovery otherwise than as to costs as above provided. [62 v. 17, § 109; S. & S. 415]

Statement in judgment that defendant subject to arrest on it.

SEC. 7. Where judgment is rendered in a case where the defendant is subject to arrest and imprisonment, it must be so stated in the judgment, and entered in the docket. [51 v. 179, § 110; S. & C. 767.]

CHAPTER 8.

APPEALS.

SECTION
1. Appeal allowed, except as otherwise provided.
2. The undertaking, its amount, and condition.
3. Proceedings of justice when case is appealed.
4. Docketing case in court.
5. Parties in the common pleas: pleadings, etc.
6. Proceedings if appeal not prosecuted.
7. And on failure of appellant plaintiff to file petition.
8. Proceedings before justice, if parties fail to perfect appeal.
9. Effect of less recovery than in court below.
10. Proceedings by appellant defendant when plaintiff fails to file petition: costs, if such defendant recovers judgment, or suffers judgment against him.
11. Liability of surety for appeal.
12. Cause of quashing appeal must be stated in the order.
13. Amendment or change of undertaking for appeal.
14. In what cases appeals not allowed.
15. Proceedings if justice's commission expires before appeal taken.
16. Rule days for pleading in appealed cases.

Appeal allowed, except as otherwise provided.

SECTION 1. In all cases not otherwise specially provided for by law, either party may appeal from the final judgment of any justice of the peace, to the court of common pleas of the county where the judgment was rendered. [73 v. 14, § 111.]

The undertaking:

Its amount and condition, etc.

SEC. 2. The party appealing shall, within ten days from the rendition of the judgment, enter into an undertaking to the adverse party with at least one good and sufficient surety to be approved of by such justice, in a sum not less than fifty dollars in any case, nor less than double the amount of the judgment and costs, conditioned:

1. That the appellant will prosecute his appeal to effect, and without unnecessary delay:

2. That if judgment be adjudged against him on the appeal, he will satisfy such judgment and costs.

Such undertaking need not be signed by the appellant. [51 v. 179, § 112; S. & C. 767.]

Proceedings of justice when a case is appealed.

SEC. 3. And the said justice shall make out a certified transcript of his proceedings, including the undertaking taken for such appeal, and shall on demand, deliver the same to the appellant, or his agent, who shall deliver the same to the clerk of the court to which such appeal may be taken, on or before the thirtieth day from the rendition of the judgment appealed from, and such justice shall also deliver, or transmit the bill or bills of particulars, the deposition, and all other original papers, if any, used on the trial before him, to such clerk, on or before the said thirtieth day from said judgment; and all further proceedings before the justice of the peace in that case shall cease and be stayed from the time of entering into such undertaking. [63 v. 48, § 113; S. & S. 419]

Docketing case in court.

SEC. 4. The clerk, on receiving such transcript, and other papers as aforesaid, shall file the same, and docket the appeal. [51 v. 179, § 114; S. & C. 767.]

Parties in common pleas: pleadings, etc.

SEC. 5. The plaintiff in the court below shall be plaintiff in the court of common pleas; and the parties shall proceed, in all respects, in the same manner as though the action had been originally instituted in the said court. [51 v. 179, § 115; S. & C. 767.]

Proceedings if appeal not prosecuted.

SEC. 6. If the appellant shall fail to deliver the transcript and other papers, if any, to the clerk, and have his appeal docketed as aforesaid, on or before the thirtieth day from the rendition of the judgment appealed from, the appellee may, thereafter, at the term of said court next after the expiration of said thirty days, file a transcript of the proceedings and judgment of such justice, and the said cause shall, on motion of the appellee, be docketed; and the court is authorized and required, on his application, either to enter a judgment in his favor similar to that entered by the justice of the peace, and for all costs that have accrued in said court, and award execution thereon; or such court may, with the consent of said appellee, dismiss the appeal at the cost of the appellant, and remand the cause to the justice of the peace, to be thereafter proceeded in as if no appeal had been taken. [64 v. 11, § 116; S. & S. 419.]

And on failure of appellant plaintiff to file petition.

SEC. 7. If the plaintiff, in the action before the justice, shall appeal from any judgment rendered against such plaintiff, and after having filed his transcript and caused such an appeal to be docketed, according to the provisions of this chapter, shall fail to file a petition, or otherwise neglect to prosecute the same to final judgment, so that such plaintiff shall become nonsuit, it shall be the duty of the court to render judgment against such appellant, for the amount of the judgment rendered against him by the justice of the peace, together with interest accrued thereon, and for costs of suit, and to award execution therefor, as in other cases. [51 v. 179, § 117; S. & C. 767.]

SEC. 8. If both parties fail to enter such appeal within the time limited as aforesaid, the justice, on receiving a cer-

Proceedings before justice, if parties fail to perfect appeal.

tificate from the clerk of the court, stating that the appeal was not entered, or being entered, was dismissed as aforesaid, shall thereupon issue execution upon the judgment, in the same manner as if such appeal had never been taken. [51 v. 179, § 118; S. & C. 767.]

Effect of less recovery than in court below.

SEC. 9. If any person appealing from a judgment rendered in his favor, shall not recover a greater sum than the amount for which judgment was rendered, besides costs and the interest accruing thereon, every such appellant shall pay the costs on such appeal. [51 v. 179, § 119; S. & C. 767.]

Proceedings by appellant defendant when plaintiff fails to file petition: costs, if such defendant recovers judgment or suffers judgment against him.

SEC. 10. If the defendant appeal from any judgment rendered in favor of the plaintiff, and after having filed his transcript and caused such appeal to be docketed, the plaintiff shall fail to file a petition, or otherwise fail to prosecute the same to final judgment, the defendant in such action may file his answer setting up whatever claim or demand he may have against such plaintiff, and prosecute the same to final judgment, in which case, if the defendant shall recover judgment against the plaintiff, all costs which have accrued before the justice, and in the appellate court, shall be adjudged against such plaintiff, or he may, on motion to the court, suffer judgment to be entered against him for the amount of judgment below, in which case all costs which have accrued before the justice and in the appellate court, shall be adjudged against such defendant. [56 v. 41, § 1; S. & C. 809.]

Liability of surety for appeal.

SEC. 11. When an appeal shall be dismissed, or when judgment shall be entered in the court of common pleas against the appellant, the surety in the undertaking shall be liable to the appellee for the whole amount of the debt, costs, and damages, recovered against the appellant. [51 v. 179, § 120; S. & C. 767.]

Cause of quashing must be stated in the order.

SEC. 12. When an appeal, taken to the court of common pleas, shall there be quashed, by reason of irregularity in taking or consummating the same, the cause for quashing shall be stated in the order of the court, and a transcript of such order shall be lodged with such justice, who shall thereupon proceed to issue execution, in the same manner as if no appeal had been taken. [51 v. 179, § 121; S. & C. 767.]

Amendment or change of undertaking for appeal.

SEC. 13 In proceedings on appeal, when the surety in the undertaking shall be insufficient, or such undertaking may be insufficient, in form or amount, it shall be lawful for the court, on motion, to order a change or renewal of such undertaking, and direct that the same be certified to the justice from whose judgment the appeal was taken, or that it be recorded in said court. [51 v. 179, § 122; S. & C. 767.]

In what cases appeals not allowed.

SEC. 14. Appeals in the following cases shall not be allowed:

First—On judgment rendered on confession.

Second—In jury trials where neither party claims in his bill of particulars a sum exceeding twenty dollars.

Third—In the action for the forcible entry and detention or forcible detention of real property.

Fourth—In trials of the right of property under the statutes, either levied upon by execution or attached. [73 v. 14, § 123.]

Proceedings if justice's commission expires before appeal taken.

SEC. 15. When the term of office of a justice shall expire between the date of the judgment and the time limited for appeal, such justice may take the undertaking for appeal, at any time before he has delivered his docket to his successor, and give the appealing party a transcript. After the delivery of the docket, the undertaking shall be given to his successor, and it shall be his duty to give the transcript, and do and perform all things required of his predecessor. [51 v. 179, § 124; S. & C. 767.]

Rule day for pleading in appealed cases.

SEC. 16. The rule day for filing petition in the court of common pleas in a case appealed from a justice of the peace shall be the third Saturday after the expiration of the time limited for filing the transcript; and the subsequent pleadings shall be filed within such times thereafter as is provided for the filing thereof in case commenced in that court after the return day of the summons.

CHAPTER 9.

FORCIBLE ENTRY AND DETAINER.

SECTION
1. Jurisdiction of justice: limitation.
2. Cases in which the jurisdiction may be exercised.
3. Judgment not a bar to a second action.
4. Notice, and when and how served.
5. Complaint to be first filed, and to be recorded.
6. The summons, when to be served.
7. Proceedings, if defendant fails to appear.
8. Continuance, and when undertaking therefor to be given.
9. When justice to try cause: judgment.
10. Trial by jury: the verdict.
11. Its entry, and judgment.
12. Exceptions, when they can be taken, and proceedings in error.
13. The execution: its form.
14. How writ of possession executed, unless proceedings in error prosecuted.

Jurisdiction of justice.

SECTION 1. Any justice, within his proper county, shall have power to inquire, in the manner hereinafter directed, as well against those who make unlawful and forcible entry into lands and tenements, and detain the same, as against those who having a lawful and peaceable entry into lands and tenements unlawfully and by force hold the same; and if it be found upon such inquiry that an unlawful and forcible entry has been made, and that the lands or tenements are held by force, or that the same, after a lawful entry, are held unlawfully, then said justice shall cause the party complaining to have restitution thereof, but such action can only be brought within two years after the cause of such action shall have accrued. [51 v. 179, § 125; S. & C. 765: 51 v. 57, § 11; S. & C. 940.]

Limitation.

Cases in which jurisdiction may be exercised.

SEC. 2. Proceedings under this chapter may be held in all cases against tenants holding over their terms; in sales of real estate, on executions, orders, or other judicial process, when the judgment debtor was in possession at the time of the rendition of the judgment or decree, by virtue of which such sale was made; in sales by executors, administrators, guardians, and on partition, where any of the parties to the petition were in possession at the commencement of the suit, after such sales, so made on execution or otherwise, shall have been examined by the proper court, and the same by said court adjudged legal; and in cases where the defendant is a settler, or occupier of lands or tenements, without color of title, and to which the complainant has the right of possession: this section not to be construed as limiting the provisions of the first section of this chapter. [51 v. 179, § 126; S. &. C. 767.]

Judgment not a bar to a second action.

SEC. 3. Judgments either before the justice, or in the court of common pleas, under this chapter, shall not be a bar to any after action brought by either party. [51 v. 179, § 127; S. & C. 767.]

Notice, and when and how served.

SEC. 4. It shall be the duty of the party desiring to commence an action under this chapter, to notify the adverse party to leave the premises, for the possession of which action is about to be brought, which notice shall be served at least three days before commencing the action, by leaving a written copy with the defendant, or at his usual place of abode, if he can not be found. [51 v. 179, § 128; S. & C. 767.]

Complaint to be first filed and recorded.

SEC. 5. The summons shall not issue herein until the plaintiff shall have filed his complaint in writing with the justice, which shall particularly describe the premises so entered upon and detained, and shall set forth either an unlawful and forcible entry and detention, or an unlawful and forcible detention after a peaceable or lawful entry of the described premises. The complaint shall be copied into and made a part of the record [51 v. 179, § 129; S. & C. 767.]

The summons: When to be served.

SEC. 6. The summons shall be issued and directed; shall state the cause of complaint, and the time and place of trial, shall be served and returned as in other cases. Such service shall be three days before the day of trial appointed by the justice. [51 v. 179, § 130; S & C. 767.]

Proceedings if defendant fails to appear.

SEC. 7. If the defendant does not appear in accordance with the requisitions of the summons, and it shall have been properly served, the justice shall try the cause as though he was present. [51 v. 179, § 131; S. & C 767.]

Continuance and undertaking therefor.

SEC. 8. No continuance shall be granted for a longer period than eight days, unless the defendant, applying therefor, shall give an undertaking to the adverse party, with good and sufficient surety, to be approved by the justice, conditioned for the payment of the rent that may accrue, if judgment be rendered against the defendant. [51 v. 179, § 132; S. & C. 767.]

SEC. 9. If the suit be not continued, place of trial

changed, or neither party demand a jury upon the return day of the summons, the justice shall try the cause; and if, after hearing the evidence, he shall conclude that the complaint is not true, he shall enter judgment against the plaintiff for costs; if he find the complaint true, he shall render a general judgment against the defendant and in favor of the plaintiff for restitution of the premises and costs of suit; if he find the complaint true in part, he shall render a judgment for the restitution of such part only, and the costs shall be taxed as the justice shall deem just and equitable. [51 v. 179, § 133; S. & C. 767.]

When justice to try cause.

Judgment.

Sec. 10. If a jury be demanded by either party, the proceedings, until the impanneling thereof, shall be in all respects as in other cases. The jury shall be sworn to well and truly try and determine whether the complaint of [naming the plaintiff], about to be laid before them, is true according to the evidence. If the jury shall find the complaint true, they shall render a general verdict of guilty against the defendant; if not true, then a general verdict of not guilty; if true in part, then a verdict setting forth the facts they find true. [51 v 179, § 134; S. & C. 767.]

Trial by jury.

The verdict.

Sec. 11. The justice shall enter the verdict upon his docket, and shall render such judgment in the action as if the facts, authorizing the finding of such verdict, had been found to be true by himself. [51 v. 179, § 135; S. & C. 767.]

Its entry and judgment.

Sec. 12. Exceptions to the opinion of the justice in cases under this chapter upon questions of law and evidence may be taken by either party, whether tried by jury or otherwise; but in proceedings to reverse, vacate, or modify the judgment or final order of the justice made in such cases, the petition in error can be filed in the court of common pleas, only by leave of said court, or a judge thereof, or in the absence of such judge from the county, by leave of the judge of the probate court of such county, and upon notice of such application to be first given to the opposite party. [63 v. 148, § 136; S. & S. 415.]

Exceptions: when can be taken and proceedings in error.

Sec. 13. Where a judgment of restitution shall be entered by a justice, he shall, at the request of the plaintiff, his agent, or attorney, issue a writ of execution thereon, which shall be in the following form, as near as practicable:

The execution:

The state of Ohio, ——— county:

To any constable of ——— township:

Its form.

Whereas, in a certain action for the forcible entry and detention (*or* the forcible detention, *as the case may be*), of the following described premises, to wit: ———, lately tried before me, wherein —— —— was plaintiff, and —— —— was defendant, ——— judgment was rendered on the —— day of ———, A.D. ——, that the plaintiff have restitution of said premises; and also that he recover costs in the sum of ———. You therefore are hereby commanded to cause the defendant to be forthwith removed from said premises, and the said plaintiff to have restitution of the same; also, that you levy

of the goods and chattels of the said defendant, and make the costs aforesaid, and all accruing costs, and of this writ make legal service and due return.

Witness my hand, this —— day of ———, A.D. ——.

———, ———,
Justice of the Peace.

[51 v. 179, § 137; S. & C 767.]

How writ in forcible entry and detainer executed, unless error prosecuted.

SEC. 14. The officer shall, within ten days after receiving the writ, execute the same by restoring the plaintiff to the possession of the premises, and shall levy and collect the costs and make return as upon other executions. If the justice shall receive a notice from the clerk of the court of common pleas, whose duty it is hereby made to issue such certificates under the seal of said court, that the proceedings have been stayed by the filing of a petition in error, and undertaking required by law, in the court of common pleas, he shall immediately issue his order to the officer executing the writ commanding him to delay all further proceedings upon the execution, and if the premises have been restored to the plaintiff, he shall immediately place the defendant in possession thereof, and return the writ with his proceedings and the costs taxed thereon. [63 v. 5, § 138; S. & S. 418.]

CHAPTER 10.

REPLEVIN.

SECTION
1. The affidavit in replevin.
2. The summons: its command.
3. How executed.
4. When property shall be delivered in replevin, or retained.
5. Appraisement.
6. Proceedings when property exceeds three hundred dollars in value.
7. Effect of not giving undertaking.
8. Trial as to damages of defendant
9. Finding of jury and costs.
10. Damages of plaintiff.
11. When action to proceed for damages only: costs.
12. Breaking open buildings to execute writ.
13. Suit on undertaking.
14. Penalty for issuing writ without affidavit.

The affidavit in replevin.

SECTION 1. An action for the replevin of property shall not be brought until there is filed, in the office of the justice, an affidavit of the plaintiff, his agent, or attorney, showing: 1. A description of the property claimed. 2. That the plaintiff is the owner of the property, or has a special ownership or interest therein, stating the facts in relation thereto, and that he is entitled to the immediate possession of the same. 3. That the property is wrongfully detained by the defendant. 4. That it was not taken in execution on any order or judgment against said plaintiff, or for the payment of any tax, fine, or amercement assessed against him, or by virtue of an order of delivery issued under this chapter, or any other

mesne or final process issued against him: provided, that such affidavit may omit the first and last clauses, and in lieu thereof, show that the property was taken in execution on a judgment or order other than an order of delivery aforesaid, and that the same is exempt from such execution under the laws of this state. [59 v. 32, § 140; S. & S. 416.]

The summons: its command.

SEC. 2. Upon such affidavit being made and filed with the justice, he shall issue a summons as in other cases, but, in addition, commanding the constable immediately to seize and take into custody, wherever they may be found in the county, the goods and chattels mentioned in the affidavit, and deliver the same to the plaintiff. [51 v. 179, § 141; S. & C. 767.]

How executed.

SEC. 3. The constable shall execute the writ by taking the property therein mentioned. He shall also deliver a copy of the summons to the person charged with the unlawful detention of property, or leave such copy at his usual place of residence; and shall make return of the time and manner of service, the appraisement of the property, and any undertaking taken by him. [51 v. 179, § 142; S. & C. 767.]

When property shall be delivered in replevin, or retained.

SEC. 4. The constable shall deliver to the plaintiff, his agent, or attorney, the property so taken, except in the cases hereinafter provided, when there has been executed by one or more sufficient sureties of the plaintiff, a written undertaking to the defendant in at least double the value of the property taken, but in no case less than fifty dollars, to the effect that the plaintiff shall duly prosecute the action and pay all costs and damages which may be awarded against him. In all cases where the property replevied consists of heir-looms, personal keepsakes, or other article of property, the value of which consists, in whole or in part, in its being a relic, model, gift, family picture, painting, or rare production of art or nature, and not wholly in its general marketable character, the constable shall retain and safely keep the same, subject to the order of the court: provided, the defendant, his agent, or attorney, shall, on or before the time named in the summons for trial, file his motion, in writing, with the justice of the peace (which said motion shall be heard and determined before the trial, or before the said justice shall certify the proceedings to the court of common pleas, as hereinafter provided), for an order requiring the constable to retain said property, subject to the final order of the court: provided further, that in case the defendant does not file said motion, or the court, upon application of either party, refuses to order the constable to retain said property, for the reason that it does not belong to one or more of the kinds of personal property aforesaid, the constable shall deliver said property to the plaintiff, his agent, or attorney, upon the execution of an undertaking as hereinbefore provided, within one day after the expiration of the time for filing said motion, or, in case said motion is filed, within one day after the re-

fusal of the justice to order the constable to retain the property as aforesaid: and, provided further, in case the appraised value of the property exceeds three hundred dollars, or in case an appeal is taken from the final judgment and order of the justice of the peace, the said justice shall order the constable to turn over the property in his possession to the sheriff of his county, to be by said sheriff held as in like cases originating in the court of common pleas. [65 v. 143, § 143; S & S. 416]

Appraisement.

SEC. 5. For the purpose of fixing the amount of the undertaking, the value of the property taken shall be ascertained by the oath of two responsible persons, whom the constable shall swear truly to assess the value thereof. [51 v. 179, § 144; S. & C. 767.]

Proceedings when property exceeds $300 in value.

SEC. 6. Whenever the appraised value of the property so taken shall exceed three hundred dollars, the justice shall certify the proceedings in the case to the court of common pleas of his county, and thereupon shall file the original papers, together with a certified transcript of his docket entries, in the clerk's office of said court, the case there to be proceeded in as if such suit had been commenced in said court. [70 v. 259, § 145.]

Effect of not giving undertaking.

SEC. 7. If the undertaking, required as aforesaid, be not given within twenty-four hours from the taking of the property under said order, the officer shall return the property to the defendant; and if the officer deliver any property so taken to the plaintiff, his agent, or attorney, or keep the same from the defendant, without taking such security within the time aforesaid, or if he take insufficient security, he shall be liable to the defendant in damages. [51 v. 179, § 146; S. & C. 767.]

Trial as to damages.

SEC. 8. In all cases where judgment is rendered against the plaintiff, or if he otherwise fail to prosecute his action to final judgment, the justice shall, on application of the defendant, or his attorney, impanel a jury to inquire into the right of property, and right of possession of the defendant to the property taken. If the jury shall be satisfied the said property was the property of the defendant at the commencement of the action, or if they find that the defendant was entitled to the possession only of the same at such time, then, and in either case, they shall assess such damages for the defendant as are right and proper, for which, with costs of suit, the justice shall render judgment for the defendant, and the justice shall also order any property in the possession of the constable to be delivered to the defendant. [65 v. 143, § 147; S. & S. 416.]

Finding of jury, costs, etc.

SEC. 9. In all cases where the property has been delivered to the plaintiff, when the jury shall find for the defendant, they shall also find whether the defendant had the right of property, or the right of possession only, at the commencement of the suit; and if they find either in his favor, they shall assess such damages as they think right and proper for

the defendant, for which, with costs of suit, the court shall render judgment for the defendant. In all cases where property remains in the hands of the constable, as hereinbefore provided, the jury shall find which party had the right of property and right of possession, or right of possession only at the commencement of the suit; and if they find either in favor of the plaintiff or defendant, they shall assess such damages as they think right and proper for the prevailing party, for which, with costs of suit, the court shall render judgment, and also order the constable to deliver such property to the party in whose favor judgment is rendered. [65 v. 143, § 148; S. & S. 416.]

Damages of plaintiff.

SEC. 10. In all cases, when the property has been delivered to the plaintiff, where the jury shall find for the plaintiff, on trial, or on inquiry of damages, they shall assess adequate damages to the plaintiff for the illegal detention of the property, for which, with costs of suit, the justice shall render judgment against the defendant. [57 v. 179, § 149; S. & C. 767.]

When action to proceed for damages only: costs.

SEC. 11. When the property claimed has not been taken, or has been returned to the defendant, for want of the undertaking required by section four of this chapter, the action may proceed as one for damages only, and the plaintiff shall be entitled to such damages as are right and proper; but if the property be returned for want of the undertaking required by said section, the plaintiff shall pay all costs made by taking the same. [51 v. 179, § 150; S. & C. 767.]

Breaking open buildings to execute writ.

SEC. 12. The constable, in executing the writ, may break open any building or inclosure, in which the property claimed, or any part thereof, is concealed; but not until he has been refused an entrance into said building or inclosure, and the delivery of the property, after having demanded the same. [51 v. 179, § 151; S. & C. 767.]

Suit on the undertaking.

SEC. 13. No suit shall be instituted on the undertaking given on the delivery of the property to plaintiff, before an execution issued on a judgment in favor of the defendant in the action shall have been returned, that sufficient property, whereon to levy and make the amount of such judgment, can not be found in the county. [51 v. 179, § 152; S. & C. 767.]

Penalty for issuing writ without affidavit.

SEC. 14. If any justice shall issue a writ to replevin property, as is provided by this chapter, without the affidavit being made and filed in his office, as is provided in section one of this chapter, the same shall be set aside at his costs, and he shall be liable in damages to the party injured. [51 v. 179, § 153; S. & C. 767.]

CHAPTER 11.

STRAYS AND DRIFTS.

SECTION
1. Who may take up strays, and when not to be taken up.
2. Description of stray: record by township clerk, and advertisement: record by clerk of court: fees of clerks: oath of taker up.
3. Appraisement.
4. Its record by justice: his fees and clerk's: list of strays by clerk of court.
5. Proceedings when taker up not a freeholder.
6. Strays outside of settlement.
7. How owner may reclaim stray: sale in default of payment of costs.
8. What strays shall vest in taker up: sale of others: duties of justice and constable.
9. Sale and adjustment of proceeds, etc.
10. How collected, and when to be paid to owner.

SECTION
11. Penalty, etc., for working, selling, abusing, etc., strays.
12. Stallion deemed a stray, etc.: may be gelded.
13. Boat, raft, etc., adrift, may be taken up: description and appraisement thereof.
14. Record and fees: when security required of taker up.
15. How owner of drift may reclaim same.
16. When drift shall vest in owner: and what sold, and how.
17. Township treasurer to deliver books, etc., to successor: proceedings as to strays when new township laid off.
18. Justice's stray-book: its delivery to successor: copies, etc.
19. Penalties, to be sued for by township treasurer.
20. Suits to be in name of trustees.
21. Fees of freeholders.

Who may take up estrays; and when not to be taken up.

SECTION 1. It shall be lawful for any person holding land in this state, by deed, title bond, or lease, for three or more years, and being in possession thereof, to take up any strays running at large within the township where such taker up resides; nor shall any compensation or fees be allowed to any person for taking up any stray animal from the range where such animal usually runs at large, or when the owner of such stray is known to the taker up, except as is provided in the twelfth section of this chapter. [38 v. 131, § 1; S. & C. 1413.]

Description of stray:

SEC. 2. Every person taking up any stray or strays shall, within three days thereafter, make an accurate description of the marks, brands, size, color, and supposed age of such stray or strays, and if any alteration has been made in such marks or brands, within his knowledge, the same shall be particularly described, and said taker up shall leave a copy thereof with the clerk of his township, who shall record the same in a book, to be kept for that purpose, and post up a copy thereof on the door of his office, or some other conspicuous place near thereto; and said taker up shall, within five days, advertise the same in writing, by posting up a copy thereof, at three public places in said township; and if said stray or strays shall be of any other kind than hogs or sheep, it shall be the duty of the taker up, within five days from the time of taking up such stray or strays, to transmit a copy of the description of such stray or strays to the clerk of the court of common pleas of the county, who shall enter the same on his stray-book, which books of the clerks of the

Its record by township clerk:

Advertisement:

Its record by clerk of court:

county and township shall be subject to public inspection at all reasonable times; and each of said clerks shall be entitled to receive and demand from the taker up of such stray or strays the sum of twenty-five cents for the services he may be required to perform by this chapter, and if no person shall claim and prove his or her right to any such stray or strays, within twenty days after such advertisement, the taker up shall go before a justice of the peace within the township, and make oath when and where he found such stray or strays, and that he hath neither trimmed, docked, nor altered the brands or marks of such stray or strays, or suffered the same to be done; and if any such alteration has been made within his knowledge he shall state the same. [38 v. 131, § 2; S. & C. 1413.]

Fees of clerks.

Oath of taker up.

SEC. 3. The said justice shall issue an order to two respectable freeholders or householders, to be named in such order, commanding them, forthwith, to view and appraise such stray or strays, and to return to him, upon oath, their appraisement, with a true and accurate description of the marks, brands, size, color, and supposed age of such stray or strays; and the taker up shall give notice of such order to the persons therein named. [38 v. 131, § 3; S. & C. 1413.]

Appraisement:

SEC. 4. Upon return being made of the appraisement and description as aforesaid, such justice shall record the same in his stray-book, together with the names of the taker up and appraisers; and, in all cases, the taker-up of any stray or strays as aforesaid, shall pay to the justice for his services under this chapter, the sum of fifty cents: provided, that if two or more strays, of the same species, shall be taken up by one person at the same time, they shall be included in the same entry; and, in such case, the justice and clerk aforesaid, shall receive no more than for one of such species; and the clerk shall cause a list of all strays, with the descriptions thereof, given as aforesaid, to be affixed at the door of the court-house, on the first day of the court, next holden after such returns have been made to his office. [38 v. 131, § 4; S. & C. 1413.]

Its record by justice:

His fees, and clerk's.

List of strays made by clerk of court.

SEC. 5. If any person or persons, other than those authorized in the first section of this chapter, shall take up any stray or strays, it shall be the duty of any justice of the peace of the township in which such stray or strays may have been taken up, on complaint of any freeholder of said township, to issue his warrant for the removal of such stray strays from the possession of such taker-up, and for the delivery of the same into the custody of any resident of such township, having the qualifications required by the first section of this chapter: provided, that if no resident of such township, legally qualified as aforesaid, shall be found willing to receive such stray or strays, and to proceed therewith, in all respects, as is required by law, it shall be the duty of the officer who may have served such warrant, to suffer such stray or strays immediately to go at large, subject, however,

Proceedings when taker up not a freeholder, etc.

to be taken up by any person legally qualified, at any subsequent time. [38 v. 131, § 5; S. & C. 1413.]

Strays outside of settlement.

SEC. 6. It shall be lawful for any person to take up any stray, or strays, found running at large, without the bounds of any settlement in this state; and the taker up of any such stray or strays shall forthwith go before the nearest justice of the peace, and make the oath required by the second section of this chapter, and that he hath neither trimmed, docked, nor altered the brands or marks thereof; and if the taker up be a freeholder or householder within the county where such justice resides, then the justice and taker up shall be governed by the rules and regulations prescribed in the preceding sections; but if it shall appear to the satisfaction of such justice that the taker up is not a resident of the county, and a freeholder or a householder as aforesaid, he shall require the taker up to give sufficient security to such justice, for the safe keeping and delivery of such stray or strays, agreeably to the provisions of this chapter; and on producing such security, the justice shall make a record thereof in his stray-book, and proceed in the same manner as if such stray had been taken up by a freeholder or householder; but if the taker up should fail or refuse to give such security, the justice shall issue his warrant to any constable of the township to take into his charge, or deliver to any freeholder or householder who will take charge of such stray or strays, and proceed in the same manner as if such stray or strays had been taken up within the settlement. [38 v. 131, § 6; S. & C. 1413.]

Proceedings by owner to reclaim strays.

SEC. 7. The owner or owners of any stray or strays taken up as aforesaid, on making satisfactory proof of his or their right thereto, before any justice of the township, within four months after the same was taken up, shall be entitled to demand and receive such stray or strays, with the increase, if any, having first paid as a reward to the taker up for each horse kind, the sum of one dollar; for every head of neat cattle, fifty cents; for every sheep, hog, or goat above six months old, twelve and a half cents, together with the legal fees paid by the taker up, and reasonable charges for keeping such strays; but if the taker up and the owner should disagree on the sum to be paid for keeping as aforesaid, it shall be lawful for either party to apply to a justice of the peace within the township to nominate three disinterested freeholders, whose duty it shall be to make such allowance for keeping such strays as to them shall appear just, and forthwith certify the same under their hands to such justice upon oath, and if the owner shall fail or refuse to pay the sum adjudged, together with the fees as aforesaid, within forty days thereafter, it shall be lawful for the taker up to deliver such stray or strays to any constable of the township, who shall, after giving ten days' notice by advertisement at three of the most public places in the township of the time and place of sale, proceed to sell the same for ready money to

Sale in default of payment of costs.

shall cause such boat, water craft, raft, or piece of a raft, or other valuable property, to be viewed by two freeholders or householders of the township, who shall, after viewing the same, give a description thereof, in writing, together with the value of such boat, water craft, raft, or piece of a raft, or other valuable property, and certify the same under their hands; which certificate the taker up shall deliver within five days, to some justice of the peace within the township. [38 v. 131, § 13; S. & C. 1413.]

Description and appraisement thereof.

SEC. 14. The justice to whom such certificate shall be delivered, shall make a record thereof in his stray book; and the taker up shall, at the same time, pay to the justice the sum of twenty-five cents for his services, and deposit the sum of twenty-five cents in the hands of said justice, to be by him transmitted, together with the certificate aforesaid, within fifteen days, to the clerk of the court of common pleas, and the clerk shall enter the same in his stray book, and file the original in his office: provided, always, that if the taker up is not a freeholder or householder, within the county, the justice may, if he deem it necessary, require him to give security, as in the case of stray animals, taken up under this chapter; and on neglect or refusal to comply with such rule, the justice may take such boat, water craft, raft, or piece of a raft, or other valuable property, into his own possession, or deliver it to any freeholder in the township, who shall take charge thereof; and the same proceedings shall be had as in case of persons taking up stray animals under this chapter. [38 v. 131, § 14; S. & C. 1413]

Its record, disposition, etc., and fees of justice and clerk.

When taker up may be required to give security, and proceedings in such case.

SEC. 15. The owner of such boat, craft, raft, or piece of a raft, or other valuable property, on proving his right thereto, within the time hereinafter limited, and paying to the taker up, for each flat or keel boat, scow, or lighter, and for each skiff, pirogue, or other valuable property, such reward or compensation as shall be deemed reasonable, at the discretion of the justice of the peace, together with the fees allowed by this chapter, shall be entitled to demand and receive such boat, craft, raft, or piece of a raft, or other valuable property, so taken up, as aforesaid. [38 v. 131, § 15; S. & C. 1413.]

How owner of drift may reclaim it.

SEC. 16. If the appraised value of such boat or craft, raft, or piece of a raft, or other valuable property, does not exceed five dollars, and if no person shall appear within two months after the taking up thereof, and prove his right thereto, the right of such boat or craft, raft, or piece of a raft, or other valuable property, shall vest in the taker up; but if the value shall exceed five dollars, and the owner does not appear and prove his right thereto, within two months, then the taker up shall deliver the same to any constable of the towhship, and take his receipt therefor; and the constable shall proceed to advertise, sell, and pay over the money arising therefrom, in the same manner as is directed in the case of stray animals, by the preceding sections of this

When drifts shall vest in taker up, and what sold, and how.

And how collected, etc.: as aforesaid, is hereby authorized and empowered to sue for, recover, and receive, for the purpose aforesaid, all moneys due thereon: provided, that when any property is sold as aforesaid, and the owner shall claim the same within two years, from and after such sale, and prove his, her, or their right thereto, to the satisfaction of a justice of the peace for the proper township, the justice shall issue his order to the treasurer, requiring him to assign the obligation, or any judgment thereon, to such claimant for his own use, or, if the money shall have been paid into the treasury, on such bond, requiring said treasurer to refund the same to such claimant. [38 v. 131, § 10; S. & C. 1413.]

And when to be paid to the owner of the stray.

Penalty, etc., for working, selling, abusing, etc., strays. SEC. 11. If any person, taking up any stray as aforesaid, shall sell the same, abuse, or suffer it to be abused, either by working, riding, neglecting to feed, or in any other manner, so that such stray shall, in consequence thereof, die, or be lessened in value, or shall take, or cause such stray or strays to be taken out of the township more than two days at any one time, or shall, by his or her neglect, suffer such stray or strays to escape; or if any person shall knowingly purchase any stray or strays, contrary to the provisions of this chapter, the person so offending shall be liable to the action of the party injured, or the trustees of the township, as the case may be, and, upon conviction thereof, shall pay the full amount of damages sustained, and costs of suit; and if any person, who may have taken up any horse, mare, or gelding, shall in any manner work or use the same, such person shall be debarred from receiving any compensation for keeping such stray. [38 v. 131, § 11; S. & C. 1413.]

Stallion deemed a stray, etc.: SEC. 12. If any stallion, one and a half years old, or upward, shall be found running at large out of the inclosed ground of the owner or keeper of said horse, it shall be lawful for any person to take up such horse, and forthwith give notice to the owner or keeper thereof, if the said owner or keeper be known; and if the owner or keeper do not appear within three days thereafter, and pay to the said taker up, two dollars as a compensation for his trouble, the taker up shall proceed to advertise said horse; and the same proceedings shall be had, in every respect, as hereinbefore provided in cases of stray horses: provided, that the taker up may, after the expiration of twenty days from the time of advertising, geld, or procure to be gelded, the said horse, which shall be done at the risk and expense of the owner. [38 v. 131, § 12; S. & C. 1413.]

May be gelded.

Boat, raft, etc., adrift may be taken up. SEC. 13. It shall be lawful for any person or persons, finding any boat, water craft, raft, or piece of raft, or other valuable property gone or going adrift, within this state, or any of the waters adjoining thereto, to take up and secure such boat, water craft, raft, or piece of a raft, or other valuable property; and if no person shall claim and prove his right to such boat, water craft, raft, or piece of a raft, or other valuable property, within thirty days thereafter, the taker up

shall cause such boat, water craft, raft, or piece of a raft, or other valuable property, to be viewed by two freeholders or householders of the township, who shall, after viewing the same, give a description thereof, in writing, together with the value of such boat, water craft, raft, or piece of a raft, or other valuable property, and certify the same under their hands; which certificate the taker up shall deliver within five days, to some justice of the peace within the township. [38 v. 131, § 13; S. & C. 1413.]

Description and appraisement thereof.

SEC. 14. The justice to whom such certificate shall be delivered, shall make a record thereof in his stray book; and the taker up shall, at the same time, pay to the justice the sum of twenty-five cents for his services, and deposit the sum of twenty-five cents in the hands of said justice, to be by him transmitted, together with the certificate aforesaid, within fifteen days, to the clerk of the court of common pleas, and the clerk shall enter the same in his stray book, and file the original in his office: provided, always, that if the taker up is not a freeholder or householder, within the county, the justice may, if he deem it necessary, require him to give security, as in the case of stray animals, taken up under this chapter; and on neglect or refusal to comply with such rule, the justice may take such boat, water craft, raft, or piece of a raft, or other valuable property, into his own possession, or deliver it to any freeholder in the township, who shall take charge thereof; and the same proceedings shall be had as in case of persons taking up stray animals under this chapter. [38 v. 131, § 14; S. & C. 1413.]

Its record, disposition, etc., and fees of justice and clerk.

When taker up may be required to give security, and proceedings in such case.

SEC. 15. The owner of such boat, craft, raft, or piece of a raft, or other valuable property, on proving his right thereto, within the time hereinafter limited, and paying to the taker up, for each flat or keel boat, scow, or lighter, and for each skiff, pirogue, or other valuable property, such reward or compensation as shall be deemed reasonable, at the discretion of the justice of the peace, together with the fees allowed by this chapter, shall be entitled to demand and receive such boat, craft, raft, or piece of a raft, or other valuable property, so taken up, as aforesaid. [38 v. 131, § 15; S. & C. 1413.]

How owner of drift may reclaim it.

SEC. 16. If the appraised value of such boat or craft, raft, or piece of a raft, or other valuable property, does not exceed five dollars, and if no person shall appear within two months after the taking up thereof, and prove his right thereto, the right of such boat or craft, raft, or piece of a raft, or other valuable property, shall vest in the taker up; but if the value shall exceed five dollars, and the owner does not appear and prove his right thereto, within two months, then the taker up shall deliver the same to any constable of the towhship, and take his receipt therefor; and the constable shall proceed to advertise, sell, and pay over the money arising therefrom, in the same manner as is directed in the case of stray animals, by the preceding sections of this

When drifts shall vest in taker up, and what sold, and how.

chapter; and the owner of such boat, craft, raft, or piece of a raft, or other valuable property, sold as aforesaid, shall be entitled to receive the amount thereof, out of the township treasury, in the same manner as is provided in the preceding sections, in the case of stray animals: provided, that if the appraised value of any boat or craft, taken upon the shores of Lake Erie, shall not exceed eight dollars, and no person shall appear and prove his right thereto, within the time provided by this section, such boat or craft, or other property, shall be vested in the person taking up the same. [38 v. 131, § 16; S. & C. 1413.]

Township treasurers to deliver moneys, books, etc., to successors.

SEC. 17. The several township treasurers shall pay over all moneys, in their hands, belonging to the treasury, and also deliver all books, and all bonds deposited in their hands, to their successors in office; and when any new township shall be set off, within the bounds of which there shall be any stray or drift, which, agreeably to this chapter, ought to be sold, it shall be the duty of the justice to whom the return of the appraisement of such stray or drift was made, or his successor in office, to furnish a copy of such appraisement to the constable whose duty it would have been to sell such stray or drift, had not such township been so set off; and the constable, furnished with such copy, shall proceed to advertise and sell such stray or drift in the same manner as hereinbefore provided; and the proceeds of such sale, after paying the incidental expenses, shall be paid into the treasury of the township so set off, for the use of such township. [38 v. 131, § 17; S. & C. 1413.]

Proceedings as to strays when new township laid off.

Justice's stray book: to deliver it to successor, who may give copies, etc.

SEC. 18. It shall be the duty of each justice of the peace, to keep a book of sufficient size for the purpose of recording all strays, the appraisement of which shall be returned to his office; and when the office of such justice becomes vacant, by his term of service expiring, resignation, or otherwise, he, or his legal representatives, shall deliver the said book to the clerk of the township; and it shall be the duty of such clerk to deliver over such book to the person who shall succeed said justice in office, whose duty it shall be to furnish a copy of such appraisement, in the same manner as if he had been in office at the time the return of such appraisement was made. [38 v. 131, § 18; S. & C, 1413.]

Penalty for neglect of duty, etc., under this chapter.

SEC. 19. If any person shall neglect to perform any of the duties required by this chapter, or shall do any thing contrary thereto, such person shall forfeit and pay a sum not exceeding one hundred dollars, nor less than one dollar, to be recovered by action before any court having cognizance thereof, and shall, moreover, be liable to the action of the party injured; and it is hereby made the duty of each township treasurer to sue for, and collect and pay over, all moneys arising by virtue of any forfeiture incurred as aforesaid. [38 v. 131, § 19; S. & C. 1413.]

Township treasurers to sue, etc.:

SEC. 20. All suits brought in behalf of the township, under the provisions of this chapter, shall be prosecuted by

the treasurer thereof, in the name of the trustees of the township, any thing in this chapter to the contrary notwithstanding. [38 v. 131, § 20; S. & C. 1413.] In name of trustees.

SEC. 21. In every case, when any freeholders or householders perform any services under the provisions of this chapter, they shall each be entitled to receive the sum of fifty cents for each day they may be actually employed, to be paid at the time of service, by the person or persons taking up such stray or strays. [38 v. 131, § 21; S. & C. 1413.] Fees of freeholders.

CHAPTER 12.

EXECUTION, AND ITS INCIDENTS.

SECTION
1. Executions may issue within five years, on request.
2. When issued without demand.

STAY OF EXECUTION.

3. When stay of execution to be applied for, and undertaking therefor.
4. For what time stay allowed.
5. Cases in which stay of execution shall not be allowed.
6. Recall of execution.
7. Bail for stay to be proceeded against before surety liable on judgment.
8. Surety may demand increase of stay bail: proceedings in such case: and when he may have execution against principal and stay bail.
9. When execution may issue notwithstanding the stay.
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11. How, in such case, second stay obtained.
12. When judgment to stand for benefit of bail: who may obtain execution: and transcript.
13. Proceedings to obtain further surety for stay.
14. When justice may issue execution for other justice.
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18. Constable may omit arrest, or permit escape, at his peril.
19. How long debtor may be imprisoned.
20. The affidavit of the prisoner.
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24. Issuing of order of arrest after judgment: the affidavit.
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26. The notice of sale.
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29. The inventory, and penalty against constable for not making.
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31. Security for re-delivery of goods.
32. Rights, etc., of landlord or tenant in crops, etc, against whom writ was not issued, protected.
33. Excuse of constable for failure to execute writ.

Execution may issue within five years, on request.

SECTION 1. Execution for the enforcement of a judgment before a justice of the peace (except when it has been taken to the common pleas on error, or appeal, or docketed therein, or during the time it may be stayed, as provided by this title), may issue by the justice before whom the judgment was rendered, or by his successor in office, on the application of the party entitled thereto, at any time within five years from the entry of the judgment, or the date of the last execution issued thereon, or the revivor thereof. [51 v. 179, § 154; S. & C. 767.]

When issued without demand.

SEC. 2. It shall be the duty of the justice, if the case be not appealed, taken up on error, docketed in the common pleas, or bail has not been given for the stay of execution at the expiration of ten days from the entry of the judgment, to issue execution without a demand, and proceed to collect the judgment, unless otherwise directed by the judgment creditor. [51 v. 179, § 155; S. & C. 767.]

STAY OF EXECUTION.

When stay of execution to be applied for, and undertaking therefor.

SEC. 3. Any person against whom judgment may be rendered before a justice of the peace, except as hereinafter excepted, may have stay of execution for the several periods hereinafter mentioned, by entering into an undertaking to the adverse party, within ten days after the rendition of such judgment, with good and sufficient surety, resident of the county, as the justice shall approve, conditioned for the payment of the amount of such judgment, interest, and costs, and costs that may accrue; which undertaking shall be entered on the docket of the justice, and be signed by the surety. [51 v. 179, § 156; S. & C. 767.]

How long stay granted.

SEC. 4. The stay of execution hereby authorized shall be graduated as follows, namely:

First—On any judgment for five dollars and under, the stay shall be for sixty days.

Second—On any judgment exceeding five dollars, and under twenty dollars, the stay shall be for ninety days.

Third—On any judgment for twenty dollars, and under fifty dollars, the stay shall be for one hundred and fifty days.

Fourth—On any judgment for fifty dollars or upward, the stay shall be for two hundred and forty days.

Fifth—Where judgment is obtained against a surety, and he takes a stay thereon, and he obtains judgment against the principal, stay of execution must be allowed on the judgment against the principal only so long that the stay will expire one month before that allowed to the surety on the judgment against him. [51 v. 179, § 157; S. & C. 767.]

Cases in which stay of execution shall not be allowed.

SEC. 5. No stay of execution on judgments rendered in the following cases shall be allowed:

1. On judgments rendered against justices of the peace for refusing to pay over money by them collected or received in their official capacity.

2. On judgments against justices of the peace for not reporting annually to the auditor all fines as required by law.

3. On any judgment rendered against a constable for failing to make return, making a false return, or refusing to pay over money collected in his official capacity.

4. On judgments against bail for the stay of execution.

5. Where judgment is rendered in favor of bail who have been compelled by judgment to pay money on account of their principal.

6. On judgments obtained by constables on undertakings executed to them for the delivery of property, or undertakings executed to an officer in replevin of property levied on by execution.

7. On judgment rendered in favor of any person for wages due for manual labor by him performed. [68 v. 74, § 158.]

Recall of execution.

SEC. 6. If the execution issued before the undertaking for stay, or that required in case of appeal be given, and such undertaking be given afterward, and within the time allowed; the justice shall recall the execution. [51 v. 179, § 159; S. & C. 767.]

Bail for stay of execution to be proceeded against before surety or indorser liable on judgment.

SEC. 7. No execution shall be issued against any surety, or indorser, to enforce the collection of any judgment by a justice of the peace, in which bail for the stay of execution has been entered without the written assent of such surety, or indorser, unless such stay-bail, who shall be primarily liable, and first proceeded against, shall have been exhausted; in which case such surety, or indorser, shall be liable for any unsatisfied balance of such judgment, and execution may issue therefor. [60 v. 70, § 1; S. & S. 422.]

Surety or indorser may demand increase of stay bail, and proceedings in such cases, and when he may have execution against principal and bail for stay.

SEC. 8. Any such surety, or indorser, whenever he shall be of the opinion that such stay-bail is insufficient, may apply to said justice of the peace having the custody of the docket on which such judgment is entered, for further security upon said judgment; and thereupon the said justice shall issue a notice to the principal to appear at such time as said justice may appoint, not exceeding five days from the issue of said notice, to show cause why further or additional bail should not be given upon said judgment, which notice shall be served and returned by a constable in the same manner in which a summons is required to be served and returned; and if said principal shall neglect to attend at the time mentioned in said notice, or shall fail to satisfy said justice of the sufficiency of such stay-bail, or shall refuse to comply with such order as said justice of the peace shall make in that behalf, the said justice shall issue execution, and proceed to the collection of said judgment as if the stay therein had expired; and if said surety, or indorser, shall file with said justice of the peace an affidavit setting forth that the principal debtor, or bail for stay, is disposing of his property in such manner as to endanger the collection of said judgment from either of them, it shall be the duty of

said justice of the peace to forthwith issue an execution upon said judgment, and proceed to the collection thereof as if the stay on said judgment had expired; but if said principal debtor, or said stay-bail, shall, within ten days from the issuing of such execution, enter new or additional bail for stay of execution for the residue of time for which said judgment might be stayed by the laws of this state, to the satisfaction of said justice of the peace, then the said justice of the peace shall recall such execution until the time said original stay shall expire; and in the collection of said judgment, the said additional bail shall be exhausted before said surety, or indorser, shall be liable; and the said justice of the peace shall proceed against said stay-bail in one action, as jointly and severally liable upon said judgment, in case the same can not be made out of the property of the principal in the manner now provided by law: provided, that if said justice of the peace shall find that such original stay-bail is sufficient, and that said surety, or indorser, had not good reason for instituting the proceedings hereby authorized, he shall tax the cost of the proceedings to such surety, or indorser, instituting the same. [60 v. 70, § 2; S. & S 422.]

When execution may issue, notwithstanding the stay.

SEC. 9. Where any person who has become bail for stay of execution, shall remove before the expiration of such stay, into any other county or state, the justice shall, on demand, issue execution against the goods and chattels of the defendant, or other party against whom the original judgment was rendered, to be proceeded with as in other cases. [51 v. 179, § 160; S. & C. 767.]

When bail for stay may have execution issued.

SEC. 10. When any surety for the stay of execution shall become apprehensive that, by delaying the execution until the expiration of the full time of such stay, he or she may be compelled to pay the judgment, it shall be lawful for such surety to make and file affidavit of that fact, before the justice on whose docket the judgment is entered; whereupon such justice shall issue execution against the judgment debtor, which shall be proceeded in as in other cases: provided, such bail shall not thereby be discharged from liability, but may be proceeded against after the expiration of the term of stay, in the manner as if execution had not issued as aforesaid. [51 v. 179, § 161; S. & C. 767.]

How, in such case, second stay obtained.

SEC. 11. If the judgment debtor shall, within ten days after levying such execution, enter into a further undertaking for the stay of execution, during so much of the first stay as remains then unexpired, and shall pay the costs of the execution issued against him, as aforesaid, it shall be the duty of the justice to take such further undertaking, and recall the execution; and the person who last became surety shall first be proceeded against, until it shall appear, by the return of the constable, that he or she has no goods and chattels whereon to levy, before proceedings shall be instituted on the undertaking first given. [51 v. 179, § 162; S. & C. 767.]

When judgment to stand for benefit of bail.

Who may obtain execution:

And transcript.

SEC. 12. When any judgment shall be obtained against any person who shall have entered himself bail on the docket of any justice of the peace, agreeably to the provisions of this title, the original judgment shall remain good and valid in law, for the use of such bail; who, at any time thereafter, may sue out execution, on such judgment, against the goods and chattels of the defendant for the use of such bail, which shall be so indorsed by the justice, and such bail shall also be entitled to a transcript of such judgment, for his own use; which shall have the same force and effect as transcripts in other cases. [51 v. 179, § 163; S. & C. 767.]

Proceedings to obtain further surety for stay.

SEC. 13. At any time before the stay shall expire, if the justice taking the surety, or his successor in office, shall become satisfied that the surety is insufficient, it shall be his duty to cause written notice thereof to be given to the defendant, or if he be absent, that the same be left at his residence, requiring him to give additional surety. If such defendant shall not have given such additional surety, on or by the third day after the giving of such notice, such fact shall be entered on the docket, and he shall immediately issue execution against the defendant for the collection of the judgment. If within ten days after the issuing of such execution, surety to the satisfaction of the justice be given, the execution shall be recalled and stayed until the expiration of the original day. [51 v. 179, § 164; S. & C. 767.]

When justice may issue execution for other justice.

SEC. 14. It shall be lawful for any justice of the peace, of any township of this state, to issue executions on any judgments on the docket of any justice of his township, who may be unable to issue said executions in consequence of sickness, absence, or any other cause. [54 v. 34, § 165; S. & C. 798.]

May issue execution for costs.

SEC. 15. Every justice of the peace shall have the same power and authority to issue execution for costs, in the same manner and instances that the clerks of common pleas are authorized to issue such executions. [43 v. 120, § 1; S. & C. 808.]

Execution, by whom issued, and to whom directed: its requisites.

SEC. 16. The execution must be directed to a constable of the county, and subscribed by the justice by whom the judgment was rendered, or by his successor in office, or by the justice in whose hands the docket of any justice of the township has been placed, in consequence of the justice who may have rendered judgment being unable to issue by reason of sickness, absence, or any other cause; and must bear date the day of its delivery to the officer to be executed. It must intelligibly refer to the judgment, by stating the names of the parties, and the name of the justice before whom, and of the county and township where, and the time when, it was rendered; the amount of the judgment, and if less than the whole is due, the true amount thereon, as follows:

1. If it be a case where the defendant cannot be arrested, it must direct the officer to collect the amount of the judg-

ment out of the personal property of the debtor, and pay the same to the party entitled thereto.

2. If it be a case where any of the judgment debtors are certified on the docket as surety, it shall command that the money be made of the personal property of the principal debtor, and for want thereof, of the personal property of the surety. In such cases the personal property of the principal, subject to execution within the jurisdiction, shall be exhausted before any of the property of the bail shall be taken in execution.

3 If it be a case where the defendant may be arrested in addition to the foregoing, it must direct the officer, if sufficient property of the defendant, subject to the execution, cannot be found to satisfy the judgment, that he arrest the debtor, and commit him to the jail of the county, until he pay the judgment or be discharged according to law, unless the execution be accompanied by an order of arrest, as hereinafter provided.

4. It must, in all cases, direct the officer to make return of the execution, and a certificate thereon, showing the manner in which he has executed the same, in thirty days from the time of his receipt thereof. [56 v. 34, § 165; S. & C. 798.]

Against joint debtors, some of whom not served.

SEC. 17. Upon an execution on a judgment against joint debtors, upon one or more of whom the summons was not served, the execution must contain a direction to collect the amount out of the joint property of all the defendants, or the separate property of the persons upon whom the summons was served, to be specified by name. If such judgment be also such that the defendants are subject to arrest thereon, the justice must further specify the names of those defendants served with the summons, who may be arrested for want of property. [51 v. 179, § 166; S. & C. 767.]

Constable may omit to arrest, or permit escape, but, etc.

SEC. 18. A constable may, at his peril, omit to arrest a debtor, or after arrest, suffer him to go at large before the return day, subject only to his liability for an escape, or for omitting to arrest, if he fail to have either the money or the person of the debtor in custody at the expiration of thirty days. [51 v. 179, § 167; S. & C. 767.]

How long debtor may be imprisoned.

SEC. 19. The debtor, committed as herein provided, may be held in prison ten days, and, if he be a person without a family for which he provides, one day in addition, for every dollar over ten due on the execution, or if he have a family for which he provides, one day in addition for every two dollars over twenty, due on the execution. [51 v. 179, § 169; S. & C. 767.]

The affidavit of the prisoner.

SEC. 20. The affidavit of an imprisoned debtor, that he has a family for which he provides, specifying by name one or more persons, members of such family, and the place of their residence, is sufficient evidence thereof to authorize his discharge by the jailer. [51 v. 179, § 170; S. & C. 767.]

Liability of constable.

SEC. 21. A constable is liable to the party in whose favor an execution issued to him for the amount thereof, in the following cases:

1. Where he suffers thirty days to elapse without making a true return thereof to the justice, and paying to him, or to the party entitled, the money collected thereon by him.

2. Where he willfully and carelessly omits to levy on property within thirty days, or, if the defendant be liable to be imprisoned, then to arrest and commit him to the jail of the county within thirty days. [51 v. 179, § 171; S. & C. 767.]

Proceedings against the bail for stay.

SEC. 22. When an execution shall be returned unsatisfied for the want of goods and chattels, the justice shall, unless otherwise directed by the party for whom the execution issued, commence an action on the undertaking for the stay of execution, and, so soon as judgment is obtained thereon, shall issue execution, and if such execution be returned unsatisfied in whole or in part, for want of goods and chattels of the bail whereon to levy, then the plaintiff may demand and have execution on the original judgment, for the amount remaining due. [51 v. 179, § 172; S. & C. 767.]

If judgment debtor die before satisfaction, execution may first issue against stay.

SEC. 23. Where bail is given for the stay of execution, and the defendant against whom the judgment was rendered shall die before the same is satisfied, the creditor may proceed against the surety in the undertaking, in like manner as if execution had been issued against the defendant, and returned not satisfied for want of goods and chattels whereon to levy. [51 v. 179, § 173; S. & C. 767.]

ORDER OF ARREST AFTER JUDGMENT.

Issuing of order of arrest after judgment.

SEC. 24. On the judgment against the defendant, in any civil suit before a justice of the peace, when the defendant is in the custody of the officer, as hereinbefore provided for, upon order of arrest before judgment, or if, after judgment against him, there is filed in the office of such justice an affidavit of the plaintiff, his authorized agent, or attorney, made before any person competent to administer an oath, stating the amount of said judgment remaining unpaid, and establishing one or more of the particulars specified for order of arrest before judgment, said justice of the peace shall, unless otherwise ordered by the plaintiff, issue an execution, and accompany the same with an order for the arrest of the defendant. [51 v. 179, § 26; S. & C. 767.]

The affidavit.

The order of arrest.

SEC. 25. Said order of arrest shall be addressed and delivered, with a copy of the affidavit, to the constable having said execution, and shall state the names of the parties, be signed by the justice issuing it, and state the amount of the judgment and costs unpaid, and shall require the officer, in case the same shall not be paid, or an amount of property of the defendant whereon to levy execution sufficient to satisfy the same, can not be found in his township, to arrest the

defendant, if not already in the custody of the officer, and deliver him to the sheriff of the proper county, to be committed by him to the jail of the county, and kept in custody until discharged by law: provided, however, that no such order of arrest shall be issued until the undertaking required for order of arrest before judgment shall have been executed. [51 v. 179, § 27; S. & C. 767.]

SALE ON EXECUTION.

The notice of sale.

SEC. 26. All property taken in exection under the provisions of this title shall be advertised for sale, at four of the most public places within the township where such property was seized, at least ten days previous to the time appointed for such sale, which sale shall be held between the hours of ten o'clock A.M. and four o'clock P.M., at the house, or on the premises where such property was taken, or at one of the most public places within the township. [51 v. 179, § 174; S. & C. 767.]

Justice and constable not to purchase.

SEC. 27. It shall not be lawful for any justice of the peace who issued the execution, nor for the constable holding the execution, to purchase, either directly or indirectly, any property sold on such execution; and any justice or constable who shall offend against the provisions of this section, shall forfeit and pay, for every such offense, any sum not exceeding one hundred dollars nor less than five dollars; to be recovered by civil action, in the name of the state of Ohio, before any court having jurisdiction thereof, for the use of the township where such offiense was committed; and he shall moreover be liable to the action of the party injured thereby. [51 v. 179, § 175; S. & C. 767.]

Allowance for keeping stock.

SEC. 28. When any cattle or other live stock shall be taken in execution, it shall be the duty of the justice who issued the execution, or other justice charged with the duty of collecting the judgment, whereon such execution issued, to allow the constable, for keeping of the same, a reasonable compensation, to be taxed and collected as other costs in the suit. [51 v. 179, § 176; S. & C. 767.]

The inventory, and penalty against constable for not making.

SEC. 29. When a constable shall levy on and sell any goods and chattels, he shall make out and annex to his return to the execution, in virtue of which such sale was made, a true inventory of all such property, and of each article thereof, and the price at which the same was sold; and for each and every neglect to return a true and accurate schedule or inventory of property sold, or remaining unsold for want of bidders, or other just cause, and if sold, the price at which the same was sold, each and every constable guilty of such neglect shall forfeit and pay, on conviction thereof, any sum not exceeding one hundred dollars, to be recovered by action in the name of the state of Ohio, for the use of the party injured thereby, to be prosecuted before any court having cognizance thereof. [51 v. 179, § 177; S. & C. 767.]

Schedule to be returned of goods not sold.

SEC. 30. Where a constable shall have levied on any goods and chattels, which remain unsold for want of bidders, or other just cause, it shall be his duty to return, with the execution, a schedule of all such goods and chattels; and the justice shall, unless otherwise directed by the party for whom such execution issued, or his agent, immediately thereafter, issue an order thereby commanding any constable to whom the same may be directed or delivered, to expose such property to sale; which sale, and the proceedings thereon, shall be the same as if such property had been sold on the original execution. [51 v. 179, § 178; S. & C. 767.]

Order for sale of such goods.

Security for redelivery of property.

SEC. 31. Any constable having levied on goods and chattels, of which he permits the party against whom the execution issued to retain the possession, is authorized to take such security for his own indemnity as he may require, that such property shall be delivered at the time and place appointed for the sale thereof. [51 v. 179, § 179; S. & C. 767.]

Rights, etc., of landlord or tenant in crops, etc., against whom writ was not issued, protected.

SEC. 32. In all cases where any lands may have been let, reserving rent in kind, and when the crops or emblements growing or grown thereon, shall be levied on or attached by virtue of any execution, attachment, or other process, against the landlord or tenant, the interest of such landlord or tenant against whom such process was not issued, shall not be affected thereby; but the same may be sold, subject to the claim or interest of the landlord or tenant against whom such process did not issue. [51 v. 179, § 180; S. & C. 767.]

Excuse of constable for failure to execute writ.

SEC. 33. In cases where the constable shall make it appear to the satisfaction of the justice that he has been deprived of an opportunity of levying an execution within the time prescribed by this title, or otherwise prevented from making the whole of the money therein required to be made, and shall make return to the justice who issued the same to that effect, such justice is hereby authorized and required to issue further process of execution for the amount or balance remaining unsatisfied; which shall be served and returned, in all respects, as other executions are under this title. [51 v. 179, § 181; S. & C. 767.]

CHAPTER 13.

REVIVOR OF JUDGMENT.

SECTION
1. Dormant judgment, how revived.
2. The preceding section a cumulative remedy.

Dormant judgment, how revived.

SECTION 1. Any judgment which has been, or shall be rendered by a justice of the peace, and now is, or shall become dormant, may be revived in the same manner as is prescribed for reviving dormant judgments in the court of common pleas; and when the plaintiff to such dormant judgment,

his agent, or attorney, shall make an affidavit that the defendant, or any of the defendants, are non-residents of the county, and that such judgment remains unsatisfied in whole or in part, with a statement of the amount owing thereon, a notice may be published for six consecutive weeks, as provided for service by publication, notifying him to appear on a day therein named, not less than five days after the completion of such publication, and show cause why judgment shall not be revived against him or them, and if sufficient cause be not shown to the contrary, the judgment shall stand revived for the amount which the justice shall find to remain due and unsatisfied upon such judgment: provided, that the conditional order to revive, herein provided, shall be served and returned in the same time, and the same manner, as is provided for the service of summons in actions before a justice of the peace: and, provided, further, that in all cases wherein service may be made by publication, personal service of a copy of the order may be made, either within or out of the state. [62 v. 40, § 1; S. & S. 421.]

The preceding section a cumulative remedy.

SEC. 2. Nothing herein shall be construed to prevent the revivor, in the manner now prescribed by law, of judgments of justices of the peace, and mayors, transcripts of which have been or shall be filed in the court of common pleas, and entered upon the execution docket therein. [62 v. 40, § 2; S. & S. 421.]

CHAPTER 14.

CONSTABLES, AND THEIR DUTIES.

SECTION
1. Vacancy, how filled; when constable of adjoining township may act.
2. Oath and bond of constable appointed.
3. How and when justice may appoint.
4. Powers, etc., of constable appointed by justice.
5. Justice to stand as his surety.
6. Constable's general powers.
7. Duty, in executing process.
8. May call aid.
9. Return of process.
10. To note time of receiving writ.

SECTION
11. Must go to defendant's residence before returning "not found."
12. To arrest on view or warrant, and keep the peace.
13. Further general powers.
14. On taking prisoner to jail, to leave copy of process with jailer.
15. To whom to pay over money.
16. Penalties against.
17. Constable ministerial officer in justice's court; conservators of the peace; to serve criminal process without their county, and to return fugitives into other counties.

Vacancy, how filled.

SECTION 1. Whenever a vacancy shall occur in the office of constable, in any township, by death, removal, resignation, or non-acceptance of the person elected, or when there shall be a failure to elect, the township trustees shall appoint a suitable person to fill such vacancy until the next annual

election for constable, and until a successor be elected and qualified: provided, however, that in any case when there shall be no constable in any township, the constable of any other adjoining township in said county shall and is hereby authorized to serve any process that any constable of said township is now or may be authorized to serve by law. [56 v. 19, § 186; S. & C. 802.]

When constable of adjoining township may act.

SEC. 2. The constable so appointed, shall take a like oath and give a like undertaking, as is required in other cases of constables. [51 v. 179, § 187; S. & C. 767.]

Oath and bond of constable appointed.

SEC. 3. A justice of the peace may appoint a constable or constables for a special purpose, either in civil or criminal cases, whenever such appointment may become necessary in the following cases:

When and how justice may appoint.

1. Where there is no constable in the township:
2. In the case of disability of one of the regular constables in the township:
3. Where the constable therein is a party to the suit:
4. When, from the pressure of official business, the constables therein are not enabled to perform the duties required by the office.

The justice making the appointment, shall make a memorandum thereof on his docket, and shall require the person appointed to take an oath, as required in other cases. [51 v. 179, § 188; S. & C. 767.]

SEC. 4. The person so appointed by the justice, after taking such oath, shall have the same authority, be subject to the same penalties, and entitled to the same fees, as other constables. [51 v. 179, § 189; S. & C. 767.

Powers, etc., of constable by justice.

SEC. 5. Such justice shall stand as surety, and shall be in that character liable, he and his sureties, for any neglect of duty or any illegal proceedings, on the part of such constable, so by him appointed. [51 v. 179, § 190; S. & C. 767.]

Justice to stand as his surety.

SEC. 6. All constables shall be ministerial officers in justices' courts, in their respective townships, in civil cases, and in their respective counties in criminal cases, and civil process may be executed by them throughout the county, under the restrictions and provisions of the law. [51 v. 179, § 191; S. & C. 767.]

Constables' general powers.

SEC. 7. It shall be the duty of every constable to serve and execute all warrants, writs, precepts, executions, and other process to him directed and delivered, and in all respects whatever, to do and perform all things pertaining to the office of constable. [51 v. 179, § 192; S. & C. 767.]

Duty in executing process.

SEC. 8. In discharging their duties, constables may call to their aid the power of the county, or such assistance as may be necessary. [51 v. 179, § 193; S. & C. 767.]

May call aid.

SEC. 9. It shall be the duty of every constable to make due return of all process to him directed and delivered, at the proper office and on the proper return day thereof; or if the judgment be docketed in the common pleas, appealed or stayed, upon which he has an execution, on notice to return

Return of process.

the execution, stating thereon such fact. [51 v. 179, § 194; S. & C. 767.]

To note time of receiving writ.

SEC. 10. It shall be the duty of every constable, on the receipt of any writ or other process (subpœnas excepted), to note thereon the time of receiving the same; he shall also state in his return on the same, the time and manner of executing it. [51 v. 179, § 195; S. & C. 767.]

Must go to defendant's residence before returning "Not found."

SEC. 11. No constable shall make a return on any process of "Not found," as to any defendant, unless he shall have been once at least to the usual place of residence of the defendant, if such defendant have any in the county. [51 v. 179, § 196; S. & C. 767.]

To arrest on view or warrant, and keep the peace.

SEC. 12. It shall be the duty of every constable to apprehend, on view or warrant, and bring to justice, all felons and disturbers and violators of the criminal laws of this state, to suppress all riots, affrays, and unlawful assemblies, which may come to his knowledge, and, generally, to keep the peace in his proper county. [51 v. 179, § 197; S. & C. 767.]

Further general powers.

SEC. 13. In serving all process, either civil or criminal, and in doing his duties generally, when not otherwise restricted by law, the authority of a constable shall extend throughout the whole county in which he may be appointed; and in executing and serving process issued by a justice of the peace, he shall have and exercise the same authority and powers over goods and chattels, and the persons of parties, as is granted by law to a sheriff or coroner, under like process issued from courts of record. [51 v. 179, § 198; S. & C. 767.]

On taking prisoner to jail, to leave copy of process with jailer, etc.

SEC. 14. When it shall become the duty of the constable to take the body of any person to the jail of the county, he shall deliver to the sheriff or jailer a certified copy of the execution, commitment, or other process, whereby he holds such person in custody, and return the original to the justice who issued the same; which copy shall be sufficient authority to the sheriff or jailer to keep the prisoner in jail until discharged by due course of law.. [51 v. 179, § 199; S. & C. 767.]

To whom to pay over moneys.

SEC. 15. Constables shall pay over to the party entitled thereto all money received by them in their official capacity, if demand be made by such party, his agent, or attorney, at any time before he returns the writ upon which he has received it; if not paid over by that time, he shall pay the same to the justice when he returns the writ. [51 v. 179, § 200; S. & C. 767.]

Penalties against.

SEC. 16. Constables shall be liable to ten per cent. penalty upon the amount of damages for which judgment may be entered against them, for failing to make return, making a false return, or failing to pay over money by them collected, or received in their official capacity, and such judgment must include, in addition to the damages and costs, the penalty herein provided. [51 v. 179, § 201; S. & C. 767.]

Constables ministerial officers of justice's court.

Conservators of the peace.

To serve criminal process within their county.

To pursue fugitive into other counties.

SEC. 17. Constables shall be ministerial officers of the courts holden by justices of the peace, in criminal cases, within their respective counties; and it shall be their duty to apprehend and bring to justice felons and disturbers of the peace, and to suppress riots, and keep and preserve the peace within their respective counties; they shall have power, and they are hereby authorized, to execute all writs and process in criminal cases throughout the county in which they may reside, and where they were elected or appointed; and if any person charged with the commission of any crime or offense, shall flee from justice, it shall be lawful for any constable of the county wherein such crime or offense was committed, and he is hereby authorized and required, to pursue after and arrest such fugitive from justice, in any other county of this state, and such fugitive to convey before any justice of the peace of the county where such crime or offense was committed. [35 v. 87, § 25; S. & C. 810.]

CHAPTER 15.

GENERAL PROVISIONS.

SECTION
1. Justices to receive moneys from constables and pay over, or be amerced.
2. Non-resident plaintiff may be required to give security, and how.
3. Or plaintiff who removes after action commenced.
4. When evidence of indebtedness to be filed: how justice to indorse same: when no other suit to be instituted thereon, etc., unless, etc.
5. Penalty against justice for purchasing judgment.
6. Provisions of title one to apply to proceedings before justice, so far as applicable.
7. This title to apply to mayors and marshals.

Justices to receive moneys from constables and pay over, or be amerced.

SECTION 1. Justices of the peace shall receive from constables all moneys by them collected, except when the same shall have been paid over by the constable to the party entitled thereto before the return of his execution, and all moneys by such justices so received, or otherwise collected, with or without process, and received in their official capacity, for the use of any person or persons, shall be by them paid over to such person or persons, his or their agent, on demand; and if any justice of the peace shall refuse or neglect to pay over all moneys by him so received, as aforesaid, when the same shall be demanded of him at his office or place of residence, to the person or persons entitled thereto, or to his or their agent, every such justice shall, on motion in the probate court, and five days' notice thereof in writing, be amerced in the amount of such moneys with ten per cent. thereon, to

and for the use of the party entitled thereto, which amercement shall be entered on the record of said court, and shall have the same effect as a judgment, and there shall be no appeal therefrom. [59 v. 76, § 1; S. & S. 423.]

Non-resident plaintiff may be required to give security, and how.

SEC. 2. When a person, intending to bring an action before a justice of the peace, is a non-resident of the township in which he intends to commence such action, the justice may, previous to his issuing process, or at any time before trial, require such person to give security for the costs of suit, which may be done by depositing a sum of money deemed by the justice to be sufficient to discharge the costs that may accrue in the action, or by giving an undertaking with surety approved by the justice, payable to the adverse party, for the payment of all costs that may accrue in the action. [58 v. 3, § 217; S. & S. 414.]

Or plaintiff who removes after action commenced.

SEC. 3. If any plaintiff or plaintiffs, after commencing an action before a justice in the township in which he or they reside, remove out of the county, the justice may require such plaintiff or plaintiffs to deposit a sum of money, equal to the costs that have accrued and that probably will accrue, or require, in place thereof, that such party give sufficient surety for all costs which have accrued or which may accrue in the action, and in default to do either, shall enter a non-suit against the plaintiff or plaintiffs. [51 v. 179, § 218; S. & C. 767.]

When evidence of indebtedness to be filed.

SEC. 4. In all actions instituted before a justice of the peace, founded upon any bond, sealed bill, promissory note, or other instrument of writing, for the payment of a sum of money certain, upon which the whole amount of money therein promised is due, it shall be the duty of the plaintiff, his agent, or attorney, to file said bond, sealed bill, promissory note, or other written evidence of indebtedness, upon which such suit is brought, with such justice of the peace; and if, upon the trial, judgment shall be entered thereon in favor of the plaintiff, such bond, sealed bill, promissory note, or instrument of writing, shall be retained by the justice so rendering judgment, who shall indorse thereon the sum for which he shall have entered judgment, and shall subscribe his name thereto; and upon payment, or tender of the amount of such payment, together with the costs accruing thereon, or securing the payment of the same by putting in bail for the stay of execution, it shall not be lawful for the plaintiff to institute any other suit or suits upon said bond, sealed bill, promissory note, or other instrument of writing, for the recovery of any further sum or sums, the payment of which is secured by the same bond, sealed bill, promissory note, or other written evidence of indebtedness: provided, that when an appeal shall be taken from the judgment of such justice, it shall be his duty to deliver or transmit any bond, sealed bill, promissory note, or other written evidence produced before him on trial, to the clerk of the court of common pleas, to which such cause shall have been appealed, on or before

How justice to indorse same.

When no other suit to be instituted thereon, etc., unless, etc.

the second day of the term of the court next after taking such appeal: provided, also, that nothing herein contained shall be construed to lessen or in anywise affect the right which any creditors now have to demand from any justice of the peace, any joint and several obligations for the purpose of prosecuting any party to said obligations other than the party against whom judgment may have been rendered. [51 v. 179, § 219; S. & C. 767.]

Penalty against justice for purchasing judgment.

SEC. 5. It shall not be lawful for any justice of the peace to purchase any judgment upon any docket in his possession; and for so doing, for every such offense, such justice shall forfeit and pay a sum not more than fifty nor less than ten dollars, to be recovered by an action before any court having jurisdiction thereof, and when collected shall be paid into the treasury of the township where such offense was committed. [51 v. 179, § 220; S. & C. 767.]

Provisions of title one to apply to proceedings before justices so far as applicable.

SEC. 6. The provisions of title one [of] part third of the revised statutes, which are in their nature applicable to the proceedings before justices, and in respect of which no special provision is made in this title, are applicable to the proceedings before justices of the peace. [51 v. 179, § 202; S. & C. 767.]

This title to apply to mayors and marshals.

SEC. 7. The provisions of this title shall, so far as applicable, govern the proceedings of mayors in the exercise of the jurisdiction concurrent with justices of the peace given to them, and also to marshals as ministerial officers of mayors' courts in the same jurisdiction.

CHAPTER 16.

REPEALS.

SECTION
1. Acts and parts of acts repealed.
2. When this act to take effect.

SECTION 1. The following acts and parts of acts are hereby repealed:

S. & C. 320; 48 v. 52.

1. Section one of the act of March 21, 1850, entitled "an act directing the manner of serving mesne process against railroad companies."

S. & C. 767; 51 v. 179.

2. The act of March 14, 1853, entitled "an act of the jurisdiction and procedure before justices of the peace, and of the duties of constables, in civil courts," except sections one, two, three, four, five, six, seven, eight, nine, ten, one hundred and sixty-eight, one hundred and eighty-two, one hundred and eighty-three, one hundred and eighty-four, one hundred and eighty-five, and two hundred and three to two hundred and sixteen, both included.

S. & C. 779; 54 v. 18.

3. The act of February 26, 1857, entitled "an act to amend the act entitled an act of the jurisdiction and procedure before justices of the peace, and of the duties of constables, in civil courts, passed March 14, 1853."

S. & C. 787; 53 v. 21. 4. The act of March 5, 1856, entitled "an act to amend section 105 of an act of the jurisdiction and procedure before justices of the peace, and of the duties of constables, in civil courts, passed March 14, 1853."

S. & C. 788; 54 v. 107. 5. The act of April 7, 1857, entitled "an act to amend the 106th section of the act entitled an act of jurisdiction of justices of the peace, and of the duties of constables, in civil cases, passed March 14, 1853."

S. & C. 798; 56 v. 34. 6. The act of March 4, 1859, entitled "an act to amend section one hundred and sixty-five of an act entitled an act of the jurisdiction and procedure before justices of the peace, and of the duties of constables, in civil courts, passed March 14, 1853."

S. & C. 802; 56 v. 19. 7. The act of February 14, 1859, entitled "an act to amend the 186th section of an act entitled an act of the jurisdiction and procedure before justices of the peace, and of the duties of constables, in civil courts, passed March 14, 1853."

S. & C. 808; 43 v. 120. 8. The act of March 12, 1845, entitled "an act to amend the act entitled an act to regulate the taxation and collection of costs, passed March 9, 1835."

S. & C. 809; 56 v. 41. 9. The act of March 14, 1859, entitled "an act supplementary to an act entitled an act of the jurisdiction and procedure before justices of the peace, and of the duties of constables, in civil courts, passed March 14, 1853."

S. & C. 810; 55 v. 87. 10. Section twenty-five of the act of March 27, 1837, entitled "an act defining the powers and duties of justices of the peace and constables in criminal cases."

S. & C. 940; 51 v. 57. 11. Section eleven of the act of March 11, 1853, entitled "an act to establish a code of civil procedure."

S. & C. 1413; 38 v. 131. 12. The act of March 23, 1840, entitled "an act defining the duties of persons taking up estray animals, and securing to the owners of boats, and other water-craft found going adrift, their property therein."

S. & S. 118; 63 v. 63. 13. The act of March 31, 1866, entitled "an act to amend an act entitled an act directing the manner of serving mesne process againts railroad companies, passed March 21, 185[illegible] and to repeal an act of the above title passed March 22, 185[illegible]

S. & S. 413; 63 v. 42. 14. The act of March 20, 1866, entitled "an act to amend section one hundred and three of an act entitled an act of the jurisdiction and procedure before justices of the peace and of the duties of constables, in civil courts, passed March 14, 1853."

S. & S. 414; 58 v. 3. 15. The act of January 15, 1861, entitled "an act to amend section two hundred and seventeen of an act entitled an act of the jurisdiction and procedure before justices of the peace, and of the duties of constables, in civil courts passed March 14, 1853."

S. & S. 415; 62 v. 17. 16. The act of February 20, 1865, entitled "an act to amend section one hundred and nine of the act entitled an act of the jurisdiction and procedure before justices of the

peace, and of the duties of constables, in civil courts, passed March 14, 1853."

17. The act of April 5, 1866, entitled "an act to amend section one hundred and thirty-six of an act entitled an act of the jurisdiction and procedure before justices of the peace, and of the duties of constables, in civil courts." S. & S. 415; 63 v. 148.

18. The act of March 28, 1862, entitled "an act to amend section one hundred and forty of an act entitled an act of the jurisdiction and procedure before justices of the peace, and of the duties of constables, in civil cases, passed March 14, 1853." S. & S. 416; 59 v. 32.

19. The act of May 5, 1868, entitled "an act to amend the act relating to the civil jurisdiction of justices of the peace in reference to the replevin of property, and to repeal sections one hundred and forty-three, one hundred and forty-seven, and one hundred and forty-eight, of said act, as amended April 17, 1867." S. & S. 416; 65 v. 143.

20. The act of January 25, 1866, entitled "an act to amend section one hundred and thirty-eight of the act entitled an act of the jurisdiction and procedure before justices of the peace, and of the duties of constables, in civil courts." S. & S. 418; 63 v. 5.

21. The act of March 23, 1866, entitled "an act to amend an act entitled an act of the jurisdiction and procedure before justices of the peace, and of the duties of constables, in civil courts, passed March 14, 1853." S. & S. 419; 63 v. 48.

22. The act of February 4, 1867, entitled "an act to amend section 116 of an act entitled an act of the jurisdiction and procedure before justices of the peace, and of the duties of constables, in civil cases, passed March 14th, 1853." S. & S. 419; 64 v. 11.

23. The act of February 28, 1862, entitled "an act to amend the twenty-eighth section of the act entitled an act of the jurisdiction and procedure before justices of the peace, and of the duties of constables in civil cases." S. & S. 420; 59 v. 17.

24. The act of March 9, 1865, entitled "an act to regulate the reviving of judgments before justices of the peace." S. & S. 421; 62 v. 40.

25. The act of March 29, 1867, entitled "an act supplementary to an act entitled an act of the jurisdiction and procedure before justices of the peace, and of the duties of constables, in civil courts, passed March 14, 1853." S. & S. 421; 64 v. 72.

26. The act of April 9, 1863, entitled "an act for the protection of sureties and indorsers." S. & S. 422; 60 v. 70.

27. The act of April 30, 1862, entitled "an act relating to justices of the peace and probate courts." S. & S. 423; 59 v. 76.

28. The act of February 11, 1869, entitled "an act to amend section ninety-three of the act entitled an act of the jurisdiction and procedure before justices of the peace, and of the duties of constables, in civil courts, passed March 14, 1853." 66 v. 7.

29. The act of April 3, 1869, entitled "an act to amend section one hundred and one of the act entitled an act of the jurisdiction and procedure before justices of the peace, and 66 v. 42.

of the duties of constables, in civil courts, passed March 14, 1853."

68 v. 74. 30. The act of April 22, 1871, entitled "an act to amend section one hundred and fifty-eight of an act of the jurisdiction and procedure before justices of the peace, and of the duties of constables, in civil courts, passed March 14, 1853."

70 v. 253. 31. The act of May 3, 1873, entitled "an act to amend sections seven and eight of an act entitled an act defining the duties of persons taking up estray animals, and securing to the owners of boats and other water crafts found going adrift their property therein, passed and took effect March 23d, 1840, (S. & C., volume 2, page 1415); also, to amend section one of the amended act passed and took effect March 26th, 1841."

70 v. 259. 32. The act of May 3, 1873, entitled "an act to amend section one of an act entitled an act to amend sections 135 and 145 of an act entitled an act of the jurisdiction and procedure before justices of the peace, and of the duties of constables, in civil courts, passed March 14, 1853, passed March 11, 1872."

73 v. 14. 33. The act of March 4, 1876, entitled "an act relating to procedure before justices of the peace, and to repeal an act passed March 30th, 1875," excepting, however, from this repeal the amended section three contained in said act

74 v. 39. 34. The act of March 17, 1877, entitled "an act to amend section fifty-three of the act defining the civil jurisdiction of justices of the peace."

SEC. 2. This act shall take effect from the first day of September next.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 11, 1878.

[Senate Bill No. 34.]

AN ACT

To revise and codify the laws relating to the organization and maintenance of the militia of Ohio.

TITLE XV.

MILITIA.

CHAPTER 1. ENROLLMENT.
CHAPTER 2. ORGANIZATION.
CHAPTER 3. DISCIPLINE AND GOVERNMENT.
CHAPTER 4. UNIFORM, ARMS, DRILL, AND PAY.
CHAPTER 5. MISCELLANEOUS PROVISIONS.

CHAPTER 1.

ENROLLMENT.

SECTION
Who shall be enrolled.
Duties of assessors as to enrollment; duties, etc., of county auditors.
Who shall give information to assessors; penalty for refusal.
Refusal or willful neglect of assessors.
Compensation of assessors.
SECTION
6. Exemption, absolute.
7. Persons enrolled, but exempt except in case of war, etc.
8. Penalty for giving false certificate of disability.
9. Penalty for altering or transferring certificate of disability, etc.
10. Existing enrollment to remain in force.

Who shall be enrolled.

SECTION 1. All male citizens of this state who are eighteen ıd under forty-five years of age, except persons exempt by ıw, shall be enrolled in the militia, and perform military ıty, in the manner hereinafter prescribed. [63 v. 70, § 1; & S. 449.]

Duties of assessors as to enrollment.

SEC. 2. Township, ward, and precinct assessors shall, in ıe year eighteen hundred and eighty-one, and every fifth ıar thereafter, while taking the assessment of personal ıoperty, make two separate lists of persons liable to enrollent within their jurisdictions, respectively—one of persons liable under the provisions of section seven of this chapr, and one of all other persons subject to enrollment; and the time they make their assessment returns, they shall

Duties, etc., of county auditors:

return certified copies of such lists to the auditors of their respective counties, who shall file the same; upon satisfactory proof county auditors may correct the lists, by adding the name of any person improperly omitted, and striking off the name of any person improperly enrolled; and they shall each, on or before the third Monday of August following, make, and transmit to the adjutant-general of the state, a statement showing the number of each class of persons enrolled in each township, ward, and precinct within their respective counties. The governor may, whenever in his opinion it is unnecessary to make the enrollment provided for in this section, direct that it be dispensed with; and he may also order such enrollment to be made at any other time than as above provided, whenever in his opinion there is necessity therefor. [63 v. 70, § 2; S. & S 449]

Powers of governor.

Who shall give information to assessors; penalty for refusal.

SEC. 3. Keepers of taverns or boarding-houses, and masters or mistresses of dwelling-houses, shall, upon application of the assessors or their assistants within whose bounds their houses are situated, give information of the names of persons residing in their houses who are liable to enrollment; and every such person shall, upon like application, give his name and age; and if such keeper, master, mistress, or other person, refuse to give such information, such keeper, master, or mistress shall forfeit and pay twenty dollars, and such other person shall forfeit and pay ten dollars, to be recovered on complaint of the assessor. [63 v. 70, § 3; S. & S 449]

Refusal or willful neglect of assessors.

SEC. 4. If an assessor refuse or neglect to perform any of the duties required of him by this chapter, the governor may order the adjutant-general, or some other person, to perform any or all of such duties; and an assessor who refuses, or knowingly neglects, to perform any duty enjoined on him by this chapter, shall, for every such neglect or refusal, pay to the state not less than one hundred dollars, to be recovered before any court of record, and shall be committed to the county jail until such fine and costs are paid, or secured to be paid. [63 v. 70, § 4; S. & S 449]

Compensation of assessors.

SEC. 5. Assessors and their assistants shall be paid for their services in making the enrollment required by this chapter at the same rate and in like manner as they are paid for taking the annual assessment of property. [63 v. 70, § 5; S. & S. 449]

Exemptions, absolute:

SEC. 6. Persons hereinafter specified shall be absolutely exempt from enrollment, viz.:

Persons in U. S. service.

1. Persons in the army, navy, or volunteer force of the United States, and persons exempt from service in the militia by the laws of the United States, at the time of making the enrollment.

Physical disability.

2. Those who, by reason of permanent physical disability are unfit for the performance of military duty, and have in their possession the certificate of a reputable physician or

surgeon to such permanent disability, and describing the nature thereof.

3. Felons convicted of infamous crime, and not pardoned, and idiots and lunatics. Idiots, lunatics, and felons.

4. Members of religious denominations having articles of faith prohibiting the performance of military duty. [63 v. 70, § 6; S. & S 449.] Members of certain religious denominations.

SEC. 7. Persons hereinafter specified shall be enrolled as provided in section two of this chapter, but shall be exempt from service in the militia except in case of war, insurrection, or invasion, or the reasonable apprehension thereof: provided, that if any such person voluntarily enlist in the organized militia, he shall thereafter be held to duty therein, notwithstanding this exemption: Persons enrolled, but exempt except in case of war, etc.

1. Persons who served one year, or more, in the army or navy of the United States, during the late rebellion, and have been, or hereafter may be, honorably discharged therefrom.

2. Persons who have, at the time of any enrollment, served five consecutive years in the militia of this state; but such exemption shall not apply to a person whose service therein, a portion or all of such term, was in the capacity of a commissioned officer, unless he received, after the full term of service, an honorable discharge according to law.

3. Persons who were members of the national guard of this state, and enlisted in the military service of the United States, under the call of the governor, in eighteen hundred and sixty four, for the service known as the one hundred days' service, and were honorably discharged from said service.

4. Acting members, in good standing, and serving without pay, of companies belonging to a volunteer fire department, organized under, and subject to, the authority of a municipal corporation: provided, that persons who have served as such for five consecutive years shall be so exempt for five years after such service; but such exemption shall not apply to acting members of engine companies composed of more than sixty-four persons, of hook and ladder companies composed of more than thirty persons, or of hose companies composed of more than twenty persons. [63 v. 70, § 7; S. & S. 449: 67 v. 76, § 326: 69 v. 54, § 1: 73 v. 176, § 29.]

SEC. 8. A surgeon or physician who knowingly gives to any person liable to be enrolled in the militia a false certificate of disability, shall be fined not exceeding fifty dollars. [63 v. 70, § 8; S. & S. 449.] Penalty for giving false certificate of disability.

SEC. 9. Whoever alters or transfers any certificate of disability given by any surgeon or physician to any person otherwise liable to enrollment in the militia, or claims exemption under any such certificate not issued to him, shall be deemed guilty of forgery, and punished accordingly. [63 v. 70, § 8; S. & S. 449.] Penalty for altering or transferring certificate of disability, etc.

Existing enrollment to remain in force.

SEC. 10. Until the enrollment provided for in this chapter shall have been completed, the existing enrollment of militia shall remain in force. [63 v. 70, § 58; S. & S. 461.]

CHAPTER 2.

ORGANIZATION.

SECTION
1. Of what the organized militia is composed.
2. To be known as the "Ohio National Guard."
3. All organizations to be upon the same footing.
4. Organization of infantry.
5. Organization of cavalry.
6. Organization of artillery.
7. Contributing members.
8. When members of independent company entitled to exemptions and privileges.
9. Muster-in of companies, troops, and batteries.
10. Recruits may be enlisted.
11. Infantry may be organized into battalions and regiments.
12. Officers to be chosen by ballot.
13. Governor to prescribe regulations for elections.
14. Appointment and commission of staff and non-commissioned officers.
15. Commissions to be issued by the governor, and officers to take oath of office.
16. Rank to date from date of commission.
17. Resignation—to whom to be made, etc.
18. What acts of officer are a vacation of his office.
19. When governor may discharge officer from the service.
20. When governor may disband company, troop, or battery.
21. Brigades and divisions.
22. Senior officer to command.
23. Privileges and exemptions of members.
24. Term of service, and discharge.

Of what the organized militia is composed.

SECTION 1. The organized militia shall be composed of such companies, troops, and batteries as are now organized according to law, and such other companies, troops, and batteries as may hereafter be organized pursuant to the provisions of this title; but such force shall not exceed one hundred and fifty companies of infantry, twelve batteries of artillery, and six troops of cavalry, except as provided in sections one and four, chapter five, of this title; and companies hereafter organized shall be apportioned throughout the state in accordance with the population and requirements of the several counties, as nearly as practicable. [74 v. 227, § 11.]

To be known as the "Ohio National Guard."

SEC. 2. The organized militia shall be known as the "Ohio National Guard," and may be ordered into active service by the governor to aid the civil officers to suppress or prevent riot or insurrection, or to repel or prevent invasion; and they shall, in all cases, be called into service before the unorganized militia. [74 v. 227, § 11.]

All organizations to be upon the same footing.

SEC. 3. Companies, troops, and batteries, except two-gun batteries, heretofore organized, shall retain their organization, and be governed, controlled, and drilled, and be upon the same footing, as those organized in accordance with the provisions of this title; but any member thereof shall be entitled to be discharged from the service at the expiration of five years from the date of his enlistment. [73 v. 173, § 9.]

Organization of infantry.

SEC. 4. The infantry shall be organized as follows: Each company shall have a captain, a first lieutenant, a second lieutenant, a first sergeant, four sergeants, eight corporals, two musicians, a wagoner, and not less than twenty-four nor more than eithty-three privates; each battalion shall consist of not less than two nor more than five companies; a battalion of less than four companies shall be entitled to a major; a battalion of four or more companies shall be entitled to a major and a colonel; each regiment shall consist of not less than six nor more than ten companies, and shall be entitled to a major, a lieutenant-colonel, and a colonel; the battalion and regimental staff officers shall consist of an adjutant and a quartermaster, each with the rank of first lieutenant, a surgeon with the rank of major, an assistant surgeon, with the rank of captain, and a chaplain; the battalion and regimental non commissioned staff officers shall consist of a sergeant-major, a quartermaster-sergeant, a commissary-sergeant, a hospital-steward, a drum-major, and a fife-major; and a battalion or regimental band, to be enlisted and organized by the commandant of each battalion or regiment, in his discretion, shall consist of a leader, with the rank of sergeant major, two musicians, with the rank of sergeant, and such additional musicians, not exceeding twenty-five, as, in the judgment of such commandant, the efficiency of the band and the best interests of the service require. [74 v. 227, 229, §§ 12, 13.]

Organization of cavalry.

SEC. 5. Each troop of cavalry shall have a captain, a first lieutenant, a second lieutenant, a first sergeant, five sergeants, eight corporals, two trumpeters, two farriers, two blacksmiths, a saddler, a wagoner, and not less than twenty-four nor more than eighty-one privates. [74 v. 227, § 12.]

Organization of artillery.

SEC. 6. Each four-gun battery shall have a captain, a first lieutenant, a second lieutenant, an assistant surgeon, with the rank of captain, a first sergeant, a quartermaster-sergeant, four sergeants, eight corporals, two musicians, two artificers, a wagoner, and not less than forty nor more than eighty privates; and each six gun battery shall have a captain, a senior first lieutenant, a junior first lieutenant, a senior second lieutenant, a junior second lieutenant, an assistant surgeon, with the rank of captain, a first sergeant, a quartermaster-sergeant, six sergeants, twelve corporals, two musicians, two artificers, a wagoner, and not less than sixty nor more than one hundred and twenty privates. [74 v. 227, § 12.]

Contributing members.

SEC. 7. Contributing members may be received and enrolled by companies, troops, and batteries, but the number shall be limited as follows: For each company of infantry, or troop of cavalry, not to exceed one hundred and fifty, for each four-gun battery not to exceed one hundred and fifty, and for each six gun battery not to exceed two hundred; such members shall be subject to such contributive dues and service as may be prescribed by the code of regulations, and

by the by laws of the respective organizations: provided, that the dues of such contributing members sh ll, in no case, be less than five dollars each, per annum, and the whole number of acting and contributing members belonging to the organized militia in any county shall not exceed fifteen per centum of the voting population of such county. [74 v. 227, § 12.]

When members of independent company entitled to exemptions and privileges.

SEC. 8. If any independent infantry company, fully armed and equipped, the organizat on of which has been continuous for at least twenty years last past, agree to be subject to all calls of the governor for troops, in case of war, insurrection, riot, or invasion, and at least forty of the acting members thereof sign an agreement to that effect, and file the same with the governor, the acting and contributing members thereof, not exceeding the number allowed an infant y company of the organized militia, shall be entitled to all the privileges and exempt ons al'owed members of the national guard; the acting members thereof who sign such agreement shall, for neglect ng or refusing to respond to any such call of the governor, be subject to the same fines and penalties as members of the national guard for like offenses; all persons who enlist in such company after the filing of such agreement, shall sign a like agreement, which shall also be filed with the governor; and such company shall be kept up to at least a minimum of forty acting members. [74 v. 229, § 13.]

Muster-in of companies, troops, and batteries.

SEC. 9. A company, troop, or battery may be organized upon the petition of a number of persons, subject to military duty, equal to the minimum required for the organization proposed; such petition shall be forwarded to the governor, who, if it appear to him that the proposed organization is properly composed, that its location is suitable, and that it can be made efficient, shall refer the same to an officer designated by him for the purpose, who shall direct that the petitioners assemble at a convenient time, and then inspect them, and receive into the service of the state, for the term of five years, unless sooner discharged, such of the petitioners, and other persons, not less than the minimum number required, as, in his judgment, are proper persons to enter the same; he shall require the persons so received then to elect, by ballot, the officers to be commissioned; and he shall then transmit to the governor a muster-roll of the organization, duly signed by the persons so received, together with a certified statement as to such election, showing the names of the officers elected; and the persons so received into the service shall then be considered duly enlisted. [74 v. 229, § 13.]

Recruits may be enlisted.

SEC. 10. After the organization of a company, troop, battery, or band, recruits may be enlisted into the same, and shall sign their names to an enlistment roll, to be furnished by the adjutant-general for that purpose; and such signing shall be a legal enlistment. [74 v. 229, § 14.]

SEC. 11. When companies of infantry exist in sufficient number, the governor may organize them into battalions

and regiments, which shall be officered as provided in section four of this chapter; troops of cavalry and batteries of artillery shall be numbered; two or more batteries may be consolidated by the governor, at his discretion, so as to form a four-gun or six gun battery, with the strength and upon the basis prescribed in section six of this chapter; and a record of such numbering and lettering shall be kept in the office of the adjutant-general. [74 v. 230, § 16.]

Infantry may be organized into battalions and regiments.

SEC. 12 Field officers of battalions and regiments shall be elected by ballot, by the officers and enlisted men of such organizations, to serve for the term of five years, unless sooner discharged; and line officers shall be elected by ballot, by the officers and enlisted men of the respective companies, troops, and batteries, to serve for a like term. [74 v. 232, §§ 21, 22.]

Officers to be chosen by ballot.

SEC. 13. All elections for officers shall be governed by such regulations, not inconsistent with law, as the governor may prescribe; the governor shall provide for the election of officers to fill all vacancies; and in all cases a majority of all the votes cast at an election shall be necessary to a choice. [74 v. 232, 233, §§ 22, 27.]

Governor to prescribe regulations for elections.

SEC. 14. Commissioned and non-commissioned staff officers, and the leader and sergeants of the band, of each battalion and regiment, and non-commissioned officers of each company, troop, and battery, shall be appointed by the commanding officer of the respective organizations; and each non-commissioned officer shall be furnished with a warrant of authority, signed by the commandant of the company, troop, or battery of which he is a member, and if a member of a company attached to a battalion or regiment, the warrant shall be signed also by the commandant and adjutant of such organization. [74 v. 232, § 23.]

Appointment and commission of staff and non-commissioned officers.

SEC. 15. All commissions shall be issued by the governor; an officer duly commissioned shall, within ten days after the receipt or tender of his commission, take and subscribe the oath prescribed in the constitution of the state, and also an oath of office; the officer who administers the same shall certify the fact on the commission, and transmit a copy of such certificate to the adjutant-general, who shall file the same in his office; in case of neglect or a refusal by the officer to qualify within the time mentioned, he shall be deemed to have resigned his office, and an election shall be ordered and held without delay to fill the vacancy; but such neglect or refusal shall not operate as a release of the officer from the performance of duty while the vacancy exists. [73 v. 175, § 24.]

Commissions to be issued by the governor, and officers to take oath of office.

SEC. 16. The rank of all officers now in the service, or hereafter commissioned, shall date from the date of commission; and an officer who has served continuously in the same grade for more than one term, either by reëlection or reappointment, shall take rank from the date of his first commission in that grade. [73 v. 175, § 24.]

Rank to date from date of commission.

tions—to whom to be made, etc.

SEC. 17. The resignation of officers shall be addressed to the governor, and transmitted to the adjutant-general; resignations of commanding officers of regiments, battalions, companies not attached to a regiment or battalion, troops, and batteries, shall be transmitted direct to the adjutant-general; resignations of subordinate officers shall be transmitted through the commanding officer of their respective organizations, and in case of companies attached to battalions or regiments, such commanding officer shall transmit the resignations to the commandant of the organization to which his company is attached, who shall forward the same to the adjutant-general; and commanding officers, before transmitting resignations, shall indorse thereon their approval or disapproval, and also a statement of facts; but an officer who resigns shall not be considered out of the service until his resignation has been accepted by the governor. [74 v. 232, § 25.]

What acts of officer are a vacation of his office.

SEC. 18. An officer who moves out of the county where his command is located, or who absents himself from his command six months without leave of his commanding officer, shall be considered as having vacated his office, and an election shall be ordered and held without delay to fill the vacancy. [63 v. 70, § 26; S. & S. 454.]

When governor may discharge officer from the service.

SEC. 19. The governor may discharge from the service any incompetent or unsuitable officer, upon a report of a board of examiners finding such facts as to warrant the discharge; and he may also discharge from the service any officer who neglects or refuses to perform his duties as required by law and regulations, or who neglects or refuses to obey such lawful orders as may be given him by his superior officer. [74 v. 232, § 25.]

When governor may disband company, troop, or battery.

SEC. 20. Whenever a company, troop, or battery becomes reduced in number below one half of the minimum strength, or, from general insubordination, contention, or other cause, becomes demoralized and inefficient, and its disbandment is therefore necessary for the good of the service, the governor may disband the same, and order the officers thereof to be mustered out of the service; but no member of a company, troop, or battery shall be dishonorably discharged, except upon due trial and conviction by court-martial, or in some other lawful manner. [74 v. 232, § 25.]

Brigades and divisions.

SEC. 21. The militia, while in active service, may be organized into brigades and divisions, by the commander-in-chief. [63 v. 70, § 52; S. & S. 460.]

Senior officer to command.

SEC. 22. The command of any military force called into service under the provisions of this title shall devolve upon the senior officer of such force. [63 v. 70, § 56; S & S. 460.]

Privileges and exemptions of members.

SEC. 23. Acting and contributing members of all companies, troops, and batteries shall, during their membership, be exempt from labor on the public highways, and from service as jurors. [73 v. 176, § 29.]

SEC. 24. Every officer and enlisted man shall be held to

service for the term of five years, unless he sooner arrive at the age of forty-five years, or be disabled, or properly discharged; and upon the expiration of the service of any enlisted man as aforesaid, and upon his demand, the commandant of his company, troop, or battery shall forward, through the proper military channel, to the adjutant-general, a certificate thereof; and to such enlisted men, and, on demand, to all officers whose service has expired as aforesaid, the adjutant-general, upon the approval of the governor, shall issue and transmit a discharge, which shall show the reason therefor, and the term of service. [73 v. 176, § 29.]

Term of service and discharge.

CHAPTER 3.

DISCIPLINE AND GOVERNMENT.

SECTION
1. By what laws, regulations, and usages to be governed.
2. The governor to prescribe, print, and distribute regulations.
3. Boards of examiners.
4. Courts of discipline.
5. Trial and proceedings before courts of discipline.
6. Discharges by such courts from the service.
7. General courts-martial.
8. Regimental courts-martial.
9. Witnesses may be required to attend.
10. When father, master, or guardian liable for fines or dues.
11. Fines to be levied, and fines and dues collected, in name of state.
12. Actions for fines.
13. To whom fines and dues to be paid.

SECTION 1. Companies, troops, batteries, bands, battalions, and regiments, shall be governed by the military law of the state, the orders of the governor, and the code of regulations in the order named, and, as near as may be practicable, the regulations, articles, customs, and usages of the United States army, and in all drills and ceremonies shall conform to the standard tactics of the United States army. [74 v. 228, § 12.]

By what laws, regulations, and usages to be governed.

SEC. 2. The governor shall prescribe such regulations, not inconsistent with law, as will increase the discipline and efficiency of the national guard; he shall, as soon as practicable, convene a board of not less than three nor more than five officers, who shall prepare, and submit for his approval, a code of regulations for the government and regulation of the same, which code, upon his approval, shall be printed, and distributed to the various organizations, and shall take the place of and annul all company, troop, battery, battalion, and regimental constitutions and by-laws, except such as may be allowed by such code; and he may, whenever in his judgment it is necessary, convene a like board to review and amend such code, and to consider other military questions in the interest of the service. [74 v. 230, § 15.]

The governor to prescribe, print, and distribute regulations.

SEC. 3. The governor shall, from time to time, appoint boards of examiners, consisting of not less than three nor more than five competent officers, who shall make examina-

Boards of examiners.

tion as to the capacity, qualifications, propriety of conduct, and fitness, of all officers holding commissions in the national guard; the senior officer of any such board shall be president thereof, and the junior officer shall act as recorder; the president may appoint a provost-marshal for the board, and shall have the same power to compel the attendance of witnesses as presidents of courts-martial; the examinations shall be governed by, and conducted according to, such rules as the governor may prescribe, not inconsistent with law, and shall be held at such times and places as will best accommodate the officers to be examined; newly elected officers shall be allowed three months from date of commission to prepare for the examination; and each board shall make a full report to the governor, giving the result of the examination of each officer, and making such recommendations as seem just and proper. [74 v. 230, § 15.]

Court of discipline.

SEC. 4. There shall be appointed by the commandant of each company, troop, and battery, immediately after its organization, and on the fifteenth day of November annually thereafter, a court of discipline, composed of a commissioned officer, a sergeant, a corporal, and two privates, who shall be sworn to a faithful discharge of duty; and vacancies in such courts may be filled by such commandants for the unexpired term. Whenever an enlisted man violates the militia law, the general code of regulations, or the authorized by-laws of his company, troop, or battery, the proper commandant shall, upon notice of the fact, convene the court for the trial of the offender; not less than three members of the court shall constitute a quorum; the commissioned officer, or senior non-commissioned officer, shall preside, and one of the enlisted men shall be selected as recorder; and the court shall have jurisdiction to hear, and punish by assessing fines, or recommending discharges for the good of the service, for all offenses not otherwise provided for by law. [74 v. 234, § 31.]

Trial and proceedings before courts of discipline.

SEC. 5. Persons to be tried shall be given three days' notice of the time and place of trial, by a written or printed notice delivered to each in person, or left at their respective places of abode; and, having been so notified, they shall appear and present their excuses, and show cause, if any, why they should not be fined, or recommended for discharge, and the court shall determine the validity of the excuses presented; and persons who fail to appear shall be deemed to have waived any other or further trial. The recorder shall keep a record of the proceedings of the court, and of the evidence adduced, in each case separately, which he shall duly attest; and he shall file the same, together with a list of persons tried, and the findings and sentences, with the commandant, who shall thereupon transmit the same to the officer designated by the governor to review such proceedings, who shall review them without delay, and return all the papers pertaining thereto to the commandant. [74 v. 234, § 31.]

Discharges by such court from the service.

SEC. 6. When a person is recommended by such court to be discharged for the good of the service, and such recommendation is approved by the reviewing officer, the commandant shall prepare a proper discharge, and transmit the same to the adjutant-general for approval. [74 v. 235, § 32.]

General courts-martial.

SEC. 7. The governor may order courts-martial for the trial of officers and enlisted men of the national guard, on proper charges and specifications, the proceedings of which shall be as provided in the regulations, articles of war, and practice for the government of the army of the United States, as near as may be; and the governor, in ordering a court-martial, shall detail a judge-advocate and provost-marshal for the same. [74 v. 238, § 47.]

Regimental courts-martial.

SEC. 8. Regimental and battalion courts-martial may be convened by order of commandants of regiments or battalions, approved by the governor, under such regulations as the governor may prescribe. The proceedings, findings, and sentences of all courts-martial shall, unless otherwise ordered by the governor, be reviewed by the judge-advocate general. [74 v. 238, § 47.]

Witnesses may be required to attend.

SEC. 9. The president of a court-martial may issue subpœnas, enforce the attendance of a witness, and punish a refusal to be sworn, or to answer, as provided in civil actions. [74 v. 238, § 47.]

FINES AND DUES.

When father, master, or guardian liable for fines or dues.

SEC. 10. For a fine assessed or dues levied against a minor, in case such minor enlisted with the consent of his father, master, or guardian, the father shall be liable jointly and severally with his son, the master with his apprentice, and the guardian with his ward, for the amount of his ward's funds in his hands; and all property held in common by any society or organization, the rules or tenets of which require a community of property, shall be liable and bound for all fines assessed, or dues levied, under the provisions of this title, against any member of such society or organization. [74 v. 235, § 33.]

Fines to be levied, and fines and dues collected, in the name of the state.

SEC. 11. Dues levied by the by-laws of any organization may be collected by civil suit, without right of stay or exemption; all fines shall be assessed in the name of the state; and all suits for the collection of fines or dues shall be brought in the name of the state of Ohio, for the use of company, troop, or battery; but in no case shall the state pay any costs of such suits. [74 v. 235, § 32.]

Actions for fines.

SEC. 12. When fines assessed by a court of discipline or a court-martial are not paid within ten days after the sentence is approved by the reviewing officer, and returned to the commandant, a list thereof, and of the delinquents, shall be placed in the hands of justices of the peace within the townships in which the delinquents respectively reside, who shall thereupon render judgment against such delinquents separately, together with the costs of suit, without issuing

process, and shall issue execution thereon, without stay, directed to any constable of the proper township, who shall collect the same without exemption; and the money so collected shall, after deduction of costs, be disposed of by such justices as provided in the next section. [74 v. 235, 239, §§ 32, 47.]

To whom fines and dues to be paid.

SEC. 13. Fines assessed by courts of discipline, and dues, shall, when collected, be paid to the treasurer of the proper company, troop, or battery, for the use of the organization; and all other fines shall, when collected, be paid into the treasury of the proper county, to the credit of the general revenue fund of the state. [63 v. 70, § 48; S. & S. 459.]

CHAPTER 4.

UNIFORM, ARMS, DRILL, AND PAY.

SECTION
1. Style of dress and fatigue uniforms.
2. State will pay for fatigue uniform.
3. Adjutant-general to have control of state arsenal, and of property therein.
4. Adjutant-general to have control of all military property of the state.
5. Adjutant-general to furnish arms, etc., to organizations.
6. Adjutant general to purchase equipage, and preserve the same, and arms and stores.
7. Company and battalion drills.
8. Public inspection.
9. Encampments.
10. Duties and service during encampment.
11. Yearly payment to organizations out of state treasury.
12. Pay when in actual service of state.
13. Pay during encampments.
14. How claims for pay audited and paid.
15. Pay for service and attendance on courts-martial.
16. How armory and drill-room furnished, and expense thereof paid.

UNIFORM.

Style of dress and fatigue uniforms.

SECTION 1. The fatigue uniforms of the officers and enlisted men shall correspond with and conform to the uniform prescribed for the United States army, except the coat-of-arms, which shall be that of the state; and any regiment, battalion, troop, battery, or unattached company, may adopt a dress uniform. [74 v. 237, § 37.]

State will pay for fatigue uniform.

SEC. 2. Each enlisted man shall furnish himself with a fatigue uniform of the prescribed pattern, at a cost of not less than eight dollars, which amount shall be refunded to him out of the state treasury, upon proper vouchers being furnished, approved by the commandant of the company, troop, or battery, and by the governor; only one suit in five years shall be allowed to each member; such uniform shall be worn only when upon duty, and shall be turned over to the commandant when the member severs his connection with the organization; and companies, troops, and batteries which now have the dress, but not the fatigue uniform, shall

be allowed until the first day of January, 1879, to supply the latter. [74 v. 237, § 37.]

ARMS.

Adjutant-general to have care of state arsenal and of property therein.

SEC. 3. The adjutant-general shall have the care of the state arsenal, and the arms, accoutrements, ammunition, and other property of the state within and appertaining to the same; and he shall employ such labor thereat as, in the opinion of the governor, the necessities and best interests of the state require; but no arms shall be taken from the arsenal for the use of any military or other organization without the written consent of the governor. [64 v. 228; S. & S. 462.]

Adjutant-general to have control of all military property of the state.

SEC. 4. The adjutant-general shall, subject to the order of the governor, have control of all public arms, ammunition, accoutrements, camp and garrison equipage, and military stores belonging to the state; and he shall provide for the collection and recovery of all arms and equipments belonging to the state in the possession of any person or persons not authorized to retain the same. [73 v. 173, § 10: 74 v. 237, § 38.]

Adjutant-general to furnish arms, etc., to organizations.

SEC. 5. The adjutant general shall furnish arms and equipments, under such regulations as he may deem proper, to newly organized companies, troops, and batteries, and recruits enlisted under the provisions of this title, upon requisitions of commanding officers; but arms shall not be issued until there is deposited with the auditor of state a bond, in double the value thereof, conditioned upon their return when demanded by the governor; which bond shall be approved by the attorney-general, and signed by at least two good and sufficient sureties, whose sufficiency shall be certified by the probate judge of the proper county. [73 v. 173, § 10.]

Adjutant-general to purchase equipage, and preserve the same, and arms and stores.

SEC. 6. The adjutant-general shall purchase and keep ready for use, or issue to the troops, as the best interests of the service require, such amount and kinds of camp and garrison equipage as may be necessary; he shall see that all arms, munitions of war, camp and garrison equipage, and like stores belonging to the state, are properly cared for, and kept in good order for use; and all accounts which accrue against the state under the provisions of this section shall, if correct, be certified by the adjutant-general, countersigned by the governor, and paid out of the state treasury as other claims are paid. When the quartermaster-general is on duty by order of the governor, he shall perform the duties assigned to the adjutant general by this section; and accounts as aforesaid, certified by him as correct, and countersigned by the governor, shall be paid as herein provided. When any part of the national guard is ordered on duty, the governor shall designate an officer to make, on the part of the state, the necessary contracts for transportation, quarters, subsistence, and other supplies. [74 v. 237, § 38.]

DRILLS AND ENCAMPMENTS.

Company and battalion drills.

SEC. 7. There shall be a company, troop, and battery drill at least once every month, and a battalion drill of each battalion and regiment at least once in each year, at such time and place as may be most convenient. [74 v. 233, § 30.]

Public inspection.

SEC. 8. The adjutant-general, or an officer acting under his authority, shall publicly inspect each company, troop, and battery twice in each year—once in and including its armory, and once during the encampment, or at some other suitable time. [74 v. 233, § 30.]

Encampments.

SEC. 9. There shall be an encampment of each unattached company, and of each troop, battery, battalion, and regiment, to last not less than four nor more than six days, at least once in each year, between the first day of May and the first day of November; encampments shall be held at such times and places as the commanding officers may direct, notice of which shall be by them severally sent to the adjutant-general; and at least two weeks' notice of a battalion or regimental encampment shall be given by the commanding officer, to each company commandant. [74 v. 233, § 30.]

Duties and service during encampment.

SEC. 10. During an encampment the usual camp routine shall be observed, as near as practicable, and the officers and men shall be governed by the regulations, customs, and usages of the United States army. The commanding officer of an encampment may fix certain bounds, not including any public road, within which no spectator shall enter without leave; and whoever intrudes within such limits when forbidden to do so, or, after entering by permission, conducts himself in a disorderly manner, or whoever resists a sentry or guard, acting under orders to prevent such entry, or to prevent disorderly conduct, may be arrested by the commanding officer, or by his order, and taken before a justice of the peace of the proper township, and, upon conviction of the offense shall be fined not more than fifty nor less than ten dollars, and the costs of prosecution, and committed until such fine and costs are paid. [73 v. 233, § 30.]

PAY.

Yearly payments to organizations out of state treasury.

SEC. 11. Each company of infantry and troop of cavalry shall be entitled to receive one hundred dollars, and each battery fifty dollars for every two guns, annually, out of the state treasury, for the care of arms, and other incidental expenses, to be paid to the treasurer of the company, troop, or battery, on his application, approved by the commandant of the organization, and by the governor; but the approval of the governor shall not be given until all reports and returns required by section seventeen, chapter five, of this title, have been received by the adjutant-general. When the sum appropriated for such purpose is not sufficient for the full allowance to each organization as aforesaid, the adjutant-

general shall apportion the amount pro rata to the several organizations. [74 v. 235, § 34.]

Pay when in actual service of state.

SEC. 12. Officers and enlisted men, when serving under orders of the governor, or of a sheriff, mayor, or judge, to prevent or suppress riot or insurrection, or to repel or prevent invasion, shall receive pay at the following rates, for a period not exceeding seven consecutive days and nights, and thereafter at one-half such rates; each field officer and surgeon, two dollars and fifty cents per day or night, or five dollars per day and night; each line officer, and each staff officer ranking not higher than captain, two dollars per day or night, or four dollars per day and night; and each enlisted man one dollar per day or night, or two dollars per day and night; necessary transportation, and medical attendance, supplies, and quarters, shall also be provided for them, and subsistence shall be provided for enlisted men, but not for officers; a fair and reasonable allowance shall also be made for animals necessarily used. [74 v. 236, § 35.]

Pay during encampments.

SEC. 13. For each twenty-four hours' duty during encampments, as provided in section nine, chapter four, of this title, each officer and enlisted man shall receive one dollar; and for each day a troop of cavalry, or battery of artillery, is actually on parade, or in camp, as provided in said section, not exceeding, in all, seven days in each year, there shall be allowed not exceeding one dollar for each horse actually and necessarily used, not exceeding forty for a troop of cavalry, thirty two for a four-gun battery, and forty-eight for a six-gun battery. [74 v. 236, § 35.]

How claims for pay audited and paid.

SEC. 14. Payments under the last two sections shall be made by the state treasurer, from moneys appropriated therefor; no voucher for any such payment shall be audited unless certified as correct by the proper commanding officer, and approved by the governor; vouchers for the pay of companies, troops, and batteries, and also for the pay of field and staff officers, non-commissioned staff, and bands, of regiments and battalions, shall be furnished and certified by the commanding officers of such organization; and vouchers for transportation, subsistence, medical attendance (when not rendered by a surgeon or assistant surgeon of a regiment or battalion), medical supplies, and quarters, and use of horses, shall be furnished and certified by commanding officers of organizations for which the expense was incurred.]74 v. 236, § 35.]

Pay for service and attendance on court.-martial.

SEC. 15. Compensation for service and attendance upon courts martial, and examining and other boards, shall be as follows: Members shall receive two dollars each, for [each] day's attendance, and at the same rate for time necessarily occupied in traveling to and from sessions; provost-marshals shall be allowed for their services the same as sheriffs are allowed for similar services; witnesses shall receive fifty cents for each day's attendance, and five cents per mile for traveling to and from sessions; and the judge-advocate of

a court-martial shall receive two dollars for each day's attendance, and at the same rate for time necessarily occupied in traveling to and from sessions. Vouchers for such compensation shall be certified as correct by the president of the court or board, approved by the adjutant-general, and audited and paid as other accounts against the state. [74 v. 230, 238, §§ 15, 47.]

How armory and drill-room furnished, and expense thereof paid.

SEC. 16. Municipal corporations and townships in which all or a majority of the members of any company, troop, or battery reside, shall provide for such organization a suitable armory and drill-room, to the acceptance of an officer designated by the governor to inspect the same; and the expense thereof shall be paid either by the corporation or township wherein all the members of any such organization reside, or by corporations and townships in proportion as they have resident members of any such organization. [74 v. 235, § 34.]

CHAPTER 5.

MISCELLANEOUS PROVISIONS.

SECTION
1. When governor may call for volunteers.
2. How volunteers to be officered and governed.
3. Volunteers can not be retained beyond thirty days.
4. When the governor may order draft.
5. Who are subject to draft.
6. Organization, pay, and government of drafted men.
7. How drafts conducted.
8. Notice to drafted men, and discharge for exemption.
9. Substitutes.
10. When a drafted man is a deserter.
11. When militia required to aid civil authority.
12. Must obey the call of the civil authority.
13. How the men must be notified to appear.
14. Penalties for disobedience of orders.
15. Adjutant-general to supply blank forms of reports, etc.
16. Adjutants and orderly-sergeants to record returns.
17. Quarterly returns.
18. Governor may require certain reports to be made.
19. When governor may require bonds of officers.
20. Treasurers of all organizations to give bond.
21. Copies of this title to be printed and distributed.
22. Penalty for breaking into military store-houses.

VOLUNTEERS.

When governor may call for volunteers.

SECTION 1. In case of war, invasion, insurrection, riot, or any forcible obstruction to the execution of the laws, or reasonable apprehension thereof, the governor, if he deem the organized militia insufficient to defend the state, or to aid the civil authorities to enforce the laws, may, in his discretion, either call for volunteer recruits to temporarily fill companies, troops, and batteries of the organized militia to the maximum strength, or authorize the temporary organization of volunteer companies, troops, or batteries, or he may do both. [63 v. 70, § 49; S. & S. 459.]

How volunteers to be officered and governed.

SEC. 2. Volunteer recruits temporarily attached to existing organizations, as provided in the last section, shall be subject to the orders of the officers thereof while in the service; the governor shall commission officers for the new organizations provided for in said section, and in doing so shall have due regard to the choice of a majority of the members thereof, which shall be ascertained in such manner as he may prescribe, without delay or detriment to the object for which the organizations are required; and such commissions shall terminate when the organizations are disbanded. The governor may prescribe such lawful rules and regulations for the government of such temporary organizations as he may deem necessary, conforming, as near as practicable, to established military rules. [63 v. 70, § 49; S. & S. 459.]

Volunteers can not be retained beyond thirty days.

SEC. 3. The volunteers temporarily enlisted under the provisions of section one of this chapter, whether attached to existing, or formed into new organizations, may be retained under such enlistment not longer than thirty days, but shall be discharged as soon as the emergency for which they were required has passed; and while in such service they shall be subject to the same discipline and penalties, and receive the same pay, as the regular organized militia. [63 v. 70, § 49; S. & S. 459.]

DRAFTS.

When the governor may order draft.

SEC. 4. In any case mentioned in section one of this chapter, if, in the opinion of the governor, the volunteer recruits and temporary organizations are insufficient, or it is inexpedient to call for volunteers, he may order a sufficient number of persons, not already in service, to be drafted from the enrolled militia, in the manner provided in this chapter; and when, in his opinion, the emergency, to meet which volunteers have been called for, may continue for more than thirty days, he may, on or before the expiration of that period, order a draft as aforesaid. [63 v. 70, § 50; S. & S. 459.]

Who are subject to draft.

SEC. 5. Persons enumerated in section seven, chapter one, of this title, shall be subject to draft in case of war, insurrection, or invasion, or the reasonable apprehension thereof, but in no other case. [63 v. 70, § 50; S. & S. 459.]

Organization, pay, and government of drafted men.

SEC. 6. Persons drafted, as provided in section four of this chapter, shall either be attached to existing, or formed into new organizations, as provided in regard to volunteers enlisted for temporary service; they may be retained in the service for any period not exceeding one hundred days, under any draft; and they shall receive the same pay, and be subject to like government, as the regular organized militia. [63 v. 70, § 50; S. & S. 459.]

SEC. 7. All drafts ordered by the governor shall be determined by lot, to be drawn by the county auditor, in the

How drafts conducted.

presence of the probate judge, commissioners, clerk, sheriff, township trustees, or the trustees or councilmen of any municipal corporation, or any two of the same, residing in any specified territory within the bounds of which the draft is being made. [63 v. 70, § 53; S. & S. 460.]

Notice to drafted men, and discharge for exemption.

SEC. 8. A drafted person shall be notified of the fact by the county auditor, without delay, and directed to report at a rendezvous, within a specified time, the place and time to be named in the notice; and if he has a certificate of exemption, or other proof of non-liability to military duty, duly verified, he may present the same to the auditor within five days after receiving such notice; and if the auditor decide that such person is exempt, or not liable, he shall be discharged, and another person shall be drafted in his stead. [64 v. 70, § 54; S. & S. 460.]

Substitutes.

SEC. 9. A drafted person may offer a person as a substitute, at the time of the rendezvous mentioned in the last section; and such person, if he is able-bodied, is not less than eighteen years of age, and consents voluntarily to subject himself to the discipline and penalties applicable to the organized militia, shall be accepted as a substitute for the principal. [63 v. 70, § 55; S. & S. 460.]

When drafted man is a deserter.

SEC. 10. A drafted person who does not present to the county auditor a certificate of exemption or non-liability, and who refuses, or, without a good and sufficient excuse, fails to report in person at the time and place named in the notice required by section eight of this chapter, shall be deemed guilty of desertion, and punished as other deserters.

RIOTS.

When militia required to aid civil authority.

SEC. 11. Whenever, in any county, there is a tumult, riot, mob, or any body of men acting together with intent to commit a felony, or to do or offer violence to person or property, or by force and violence to break or resist the laws of the state, or there is reasonable apprehension thereof, the commander-in-chief, the sheriff of the county, the mayor of any municipal corporation therein, or a judge of any court of the state or United States, may issue his call to the commanding officer of any regiment, battalion, company, troop, or battery, to order his command, or any part thereof, describing the same, to be and appear, at a time and place therein specified, to act in aid of the civil authority. [63 v. 70, § 43; S. & S. 458.]

Must obey call of the civil authority.

SEC. 12. The officer to whom the call is directed shall forthwith order the troops therein mentioned to parade at the time and place appointed; and if he neglect or refuse to obey, or if any officer refuse or neglect to obey any order issued in pursuance of such call, he shall be cashiered, and be further punished by fine, and imprisonment not exceeding six months, as a court-martial may adjudge; and an enlisted man who neglects or refuses to appear at the place of

parade, or to obey any order issued in such case; or a person who advises or endeavors to persuade an officer or soldier to refuse or neglect to appear at such place, or to obey such order, shall be imprisoned not exceeding six months, or fined not exceeding one thousand dollars, or both. [63 v. 70, § 44; S. & S. 458.]

How the men must be notified to appear.

SEC. 13. Whenever the commanding officer of a company, troop, or battery orders out his command for such duty, he may order enlisted men to notify the men enrolled in such organization to appear at the time and place appointed, who shall give notice of such time and place of meeting, to each man personally, or by leaving at his usual place of abode a written or printed order, signed by the enlisted man serving the same, which notice shall be a sufficient warning. [74 v. 227, § 45.]

Penalties for disobedience of orders.

SEC. 14. Every enlisted man who refuses or neglects to serve such notice, when duly ordered so to do, and every officer or enlisted man who, having been served with notice as provided in the preceding section, refuses or neglects to obey the same promptly, shall pay not less than ten nor more than one hundred dollars, as may be adjudged by a court-martial. [63 v. 70, § 46; S. & S. 458.]

REPORTS.

Adjutant-general to supply blank forms of reports, etc.

SEC. 15. The adjutant-general shall furnish to commandants of regiments, battalions, troops, batteries, and unattached companies, blank forms of rolls, bonds, and the different returns required to be made to him; he shall, from time to time, explain the principles upon which returns should be made, and may make such general regulations concerning the organization and government of the militia as will best promote the discipline and order thereof, and supply such practical details as are required to make the organization systematic and complete; and he shall keep the papers, volumes, and records of the department in an office in the state-house, and make, and submit to the governor, before each meeting of the general assembly, a report of all matters coming within his department. [63 v. 70, § 42; S. & S. 457.]

Adjutants and orderly-sergeants to record returns.

SEC. 16. Adjutants of regiments and battalions, and orderly-sergeants of troops, batteries, and unattached companies, shall attend to, and record in a book to be provided for that purpose, all returns made, and perform such other duties as may, from time to time, be required of them by the commandant of the organization. When any adjutant or orderly-sergeant is absent, the commandant shall appoint a suitable person to perform his duties. [63 v. 70, § 41; S. & S. 457.]

SEC. 17. On the last week-day of the month of March, June, September, and December, in each year, commandants of companies, troops, and batteries shall send, through the proper military channel, to the adjutant-general, a report of

Quarterly returns.

all officers and enlisted men under their command; and they shall, at the same time, make to the adjutant-general direct a return of all camp and garrison equipage, public arms, accoutrements, and ordnance stores belonging to such organizations All such returns shall be preserved by the adjutant-general, and recorded in books of record in his office. [73 v. 176, § 28.]

Governor may require certain reports to be made.

SEC. 18. Every officer, or other person, having the custody or control of military property of the state, or money of the state to be used in the military service, or having control of the transportation or subsistence of the militia of the state, shall, from time to time, make report, in such form, and to such department, as the governor may require. [58 v. 104, § 1; S. & S. 462.]

BONDS.

When governor may require bonds of officers.

SEC. 19. The governor may, at any time, require any staff or other officer by him appointed, or other person having the custody or control of any military property of the state, or of any money to be used in the military service of the state, to give bond for the faithful discharge of his duties, in such form and amount as he may deem proper. [58 v. 104, § 1; S. & S. 462.]

Treasurers of all organizations to give bond.

SEC. 20. Every person elected or appointed to have the custody of any fund of any military organization shall, before receiving such fund, enter into bond, in twice the amount likely to be in his hands at any time, but not less than five hundred dollars, with at least two good and sufficient sureties, to be approved by a justice of the peace of the proper township, or probate judge of the proper county, payable to the state of Ohio, for the use of such organization, for the faithful and honest discharge of his duty, and the careful keeping and disbursement of such fund, according to the by-laws of the organization. [74 v. 237, § 39.]

Copies of this title to be printed and distributed.

SEC. 21. The governor shall, from time to time, cause such number of copies of this title as he may deem necessary to be printed; and the same shall be distributed to the force by the adjutant-general. [74 v. 239, § 57.]

Penalty for breaking into military store-houses.

SEC. 22. Whoever, in the day or night season, breaks and enters any building where military property of the state or of the United States is kept, shall be deemed guilty of burglary, and punished accordingly. [63 v. 70, § 40; S. & S. 457.]

CHAPTER 6.

REPEALS.

SECTION 1. The following acts and parts of acts are hereby repealed:

1. The act of April 21, 1861, entitled "an act relating to the bonds of certain officers." [58 v. 104; S. & S. 462.]

2. Section eleven of the act of April 16, 1867, entitled "an act making appropriations for the year 1867, and the first quarter of the year 1868." [64 v. 228; S. & S. 462.]

3. The act of April 2, 1866, entitled "an act to enroll the militia of Ohio, to organize a volunteer militia, and to repeal certain acts therein named," except section twenty thereof. [63 v. 70; S. & S. 449.]

4. The act of April 11, 1876, entitled "an act to amend an act entitled 'an act to enroll the militia of Ohio, to organize the volunteer militia, and to repeal certain acts therein named,' passed April 2, 1866, and to repeal certain acts therein named." [73 v. 173.]

5. The act of May 7, 1877, entitled "an act to amend an act entitled 'an act to amend an act entitled an act to enroll the militia of Ohio, to organize the volunteer militia, and to repeal certain acts therein named, passed April 2, 1866, and to repeal certain acts therein named,' passed April 11, 1876," except sections numbered seventeen, eighteen, and nineteen of said act. [74 v. 227.]

6. The act of January 24th, 1878, entitled "an act to amend an act, passed April 2, 1866, entitled on act to enroll the militia of Ohio, to organize a volunteer militia, and to repeal certain acts therein named." [75 v. 1.]

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 11th, 1878.

LOCAL AND SPECIAL ACTS.

[House Bill No. 28.]

AN ACT

To authorise the incorporated village of Millersburg, Ohio, to transfer unappropriated funds.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the council of the incorporated village of Millersburg be and they are hereby authorized to transfer the surplus funds levied and collected for the payment of bonded indebtedness of said village and now remaining in the treasury, after the payment of said indebtedness to other funds of said village, as they may direct.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed February 1, 1878.

[House Bill No. 24.]

AN ACT

To authorize the city council of Gallipolis, Gallia county, Ohio, to purchase a steam fire-engine, andto issue bonds to pay for the same.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the council of the city of Gallipolis, Gallia county, Ohio, is hereby authorized and empowered to purchase a steam fire-engine for the use of said city, and said council is hereby authorized to issue bonds to pay the same, in such amounts, and payable at such time as said council may deem proper, and, providing such bonds shall bear interest at a rate not exceeding seven per cent., payable semi-annually: provided, that said bonds shall not be sold for less than their par value, and upon advertisement in one or more papers published and of general circulation in said county of Gallia, not less than three weeks next preceding the day fixed for such sale, and to the best and highest bidder.

SEC. 2. This act shall be in force from and after its passage.

JAMES A. NORTON,
Speaker pro. tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed February 1st, 1878.

[House Bill No. 19.]

AN ACT

To change the name of Cannonsburgh, Carroll county, Ohio.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the name of the village of Cannonsburgh, situated in the county of Carroll, state of Ohio, be and the same is hereby changed to the name of Dell-Roy.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed February 1st, 1878.

[Senate Bill No. 17.]

AN ACT

To authorize the incorporated village of Ashland, Ashland county, Ohio, to borrow money for the purchase of a steam fire-engine.

SECTION. 1. *Be it enacted by the General Assembly of the State of Ohio*, That the council of the incorporated village of Ashland, Ashland county, Ohio, be and it is hereby authorized to borrow money not to exceed (3,000) three thousand dollars in the aggregate, to be applied only to the purchase of a steam fire-engine, and for this purpose to issue the bonds of said village payable on or before the expiration of three years, at the discretion of said council, and bearing interest at a rate not exceeding seven per cent. per annum, payable annually, which bonds shall be signed by the mayor, and countersigned by the clerk of said village: provided, that said bonds shall not be disposed of at less than their par value.

SEC. 2. That for the purpose of paying the said bonds and the interest thereon, as the same may become due, said council is hereby authorized to levy a tax upon all the taxable property within said village, from year to year, not exceeding in any one year, one and a half mills on a dollar over and above the levy now authorized by law, which shall be certified to the auditor of Ashland county, and collected as other taxes.

SEC. 3. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed February 1st, 1878.

[House Bill No. 34.]

AN ACT

To authorize the council of the incorporated village of Middletown to issue bonds for the purchase of grounds, and the erection and completion of a town hall, engine and hose house, and prison.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the council of the incorporated village of Middletown, Butler county, Ohio, be and the same is hereby authorized to issue the bonds of said village in any sum not exceeding fifteen thousand dollars, bearing interest at the rate not to exceed seven per centum per annum from date of issue, payable semi-annually, for the purpose of defraying the expenses of purchase of grounds and erection of a town hall, engine and hose house, and prison, for the use of said village.

SEC. 2. Said bonds shall be issued in such amounts, respectively, as will, in the judgment of said council, best subserve the negotiation and sale of the same; and the sale of said bonds shall be to the highest and best bidder, after three weeks' notice in some paper printed and of general circulation in said county, which notice shall state the time and place of such sale, the nature, and total amount and size of such bonds, the rate of interest, and when and where payable, length of time such bonds are to run, and condition of sale.

SEC. 3. The said council of said incorporated village is hereby authorized to levy a tax, in accordance with law, upon the taxable personal property and real estate of said village, to be certified to the auditor of the county of Butler, and to be collected as other taxes for village purposes.

SEC. 4. Said bonds shall not be sold for less than their par value.

SEC. 5. Provided a majority of the legal voters of said village vote in favor of issuing said bonds, at a special or regular election, held in said village, after giving ten days' notice by posting written or printed notices in ten of the most public places in said village.

SEC. 6. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed February 4th, 1878.

[Senate Bill No. 46.]

AN ACT

To authorize the Licking county agricultural society to borrow money, and issue bonds therefor, to pay debts.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the Licking county agricultural society, of Licking county, Ohio, be and they are hereby authorized and empowered, for the purpose of paying debts heretofore incurred, to borrow the sum of two thousand dollars.

SEC. 2. That to enable said society to borrow the sum of money named in section one of this act, the board of agriculture chosen by said Licking county agricultural society shall have power to issue bonds of the said

society, not to exceed in the aggregate the amount of two thousand dollars, in sums of not less than one hundred dollars each, bearing interest at a rate not exceeding eight per cent. per annum, with interest payable annually; said bonds to be made payable in one, two, and three years, in such proportion as said board of agriculture shall deem for the best interest of said society: provided, however, that said bonds shall not be sold or disposed of at less than their par value; said bonds shall be signed by the president and countersigned by the secretary of the board of agriculture of said society, and the secretary shall keep a record of the same.

SEC. 3. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed February 11, 1878.

[House Bill No. 33.]

AN ACT

To authorize the commissioners of Butler county to borrow money on the bonds of the county.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the commissioners of the county of Butler be and they are hereby authorized to issue the bonds of said county, bearing a rate of interest not to exceed seven per cent. per annum, and to dispose of the same, from time to time, at not less than their par value, and in such amounts as may be necessary to discharge the existing liabilities of said county: provided, that there shall not be issued under this act an amount exceeding thirty thousand dollars of such bonds.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed February 14, 1878.

[House Bill No. 114.]

AN ACT

To create a special school district in Louis township, Brown county, Ohio.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the infirmary farm of Brown county, Ohio, located in Louis township, in said county, be and the same is hereby created and constituted a special school district, and to be known as the infirmary school district of Brown county, Ohio. And all the inmates of said infirmary, between six and twenty-one years of age, shall be entitled to all the privileges of a common school education in said district.

SEC. 2. That the board of infirmary directors of said county are hereby constituted the board of education of said school district, and the clerk of said board of infirmary directors shall be clerk of said board of education, and said clerk and said board of education shall, within said district, do and perform all the like duties required by law of clerks and boards of education in village districts, and shall provide all necessary school rooms, school books, fuel, apparatus, as shall from time to time be required for the proper education of the youth of said district.

SEC. 3. The clerk of said school district shall, annually, on or before the first day of October in each year, make and return to the auditor of said county an enumeration of the youth of said school district, and said auditor shall apportion to the said district its proper pro rata share of all school funds, and the county treasurer of said county shall be, ex-officio, the treasurer of all the school funds of said district: provided, he shall not pay out any such school funds except on the order of said board of education, signed by said clerk and countersigned by the auditor of said county; and said treasurer shall make settlement with said board of education and auditor on the first Monday of June annually.

SEC. 4. The said board of infirmary directors shall have the power, and it shall be their duty, on or before the first Monday of May, annually, to transfer from the infirmary fund to the school fund of said district such sum as may, in addition to the school fund provided for by the third section of this act, be required to provide all the expenses for a school in said district for at least twenty-four weeks in each year. And said sums of money shall together constitute the school fund of said district.

SEC. 5. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed February 14, 1878.

[House Bill No 54.]

AN ACT

To authorize and empower the board of education of Greene township, Trumbull county, to join with the trustees of said township in the building of a school house and town hall.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the board of education of Greene township, Trumbull county, be and they are hereby authorized and empowered to join with the trustees of said township in their contract for the building of a town hall and school house, the lower story of which building shall be used for school purposes, and shall be under the control of the board of education of said Greene township; and the amount of money to be expended by such board of education for such purpose shall not exceed one thousand dollars, the amount already levied by said board at their last annual meeting, held April 16, 1877; and the total cost of said town hall and school house shall not exceed three thousand dollars.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed February 14, 1878.

[House Bill No. 59.]

AN ACT

To repeal an act passed January 26, 1877 (O. L., v. 74, pages 387 and 388), to authorize the county commissioners of Brown county, Ohio, to build and put in repair certain free turnpike roads, named therein.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That sections one, two, three, four, five, and six, including the entire above recited act, be and is hereby repealed.

SEC. 2. This act shall take effect from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed February 20, 1878.

[House Bill No. 58.]

AN ACT

To authorize the town council of the incorporated village of Waverly to borrow money and levy a tax.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That the town council of the incorporated village of Waverly, Pike county, be authorized to borrow money not to exceed fifteen hundred dollars, and issue bonds for the purpose of opening Market street, Lock street, and High street, and grading the same to the corporation line of said village, said bonds to bear interest at a rate not to exceed eight per cent. per annum, and to be disposed of at not less than the par value thereof.

SEC. 2. That the town council aforesaid be authorized to levy a tax upon the taxable property of said village, sufficient to pay said bonds and the interest thereon as the same become due.

SEC. 3. This act shall take effect from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed February 20, 1878.

[House Bill No. 51.]

AN ACT

To authorize the board of education of Union township, Butler county, Ohio, to issue bonds to build a school-house in sub-district No. 7.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the board of education of said Union township, Butler county, Ohio, be and are hereby authorized to issue township school bonds in favor of sub-district No. 7, bearing a rate of interest not to exeeed eight per cent. per annum, and to dispose of the same at nct less than their par value: provided, that there shall not be more than three thousand dollars of such bonds issued, and not for more than five years.

SEC. 2. Said board of education are hereby authorized to levy a special tax upon the property of said sub-district No. 7, to pay the principal and interest on said bonds as they become due.

SEC. 3. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed February 21, 1878.

[House Bill No. 63.]

AN ACT

For the relief of Newton Austin, treasurer of Montville township, Geauga county, Ohio.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the trustees of Montville township, Geauga county, Ohio, be and they hereby are authorized to cause to be levied upon the taxable property of said township a tax sufficient in amount to refund the sum of two hundred dollars to Newton Austin, the said sum of two hundred dollars being funds of said township of Montville, deposited by said Austin, he at the time being treasurer of said Montville, in the bank of Canfield, Murray & Canfield, at Chardin, in the said county of Geauga, in pursuance of the act therefor, passed March 20, 1867, and said sum of money having been lost by the failure of said banking company, and to relieve the said Austin and his sureties from all responsibility on account of the loss of said money, to the amount of two hundred dollars only. The levy and relief provided for in this section shall only be made and furnished upon the submission, by the trustees of said township, at the election in April, 1878, twenty days previous notice having been given of the propriety of so doing, to the qualified electors of said township, and that a majority of two-thirds of all the votes cast at the election at which said question is submitted, shall be in favor thereof.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed February 21, 1878.

[House Bill No. 135.]

AN ACT

To authorize the trustees of Defiance township, Defiance county, to transfer certain funds therein mentioned.

WHEREAS, There is now in the treasury of said Defiance township, three hundred and ninety-three dollars and eleven cents of what is known as the poor fund; therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the trustees of said Defiance township be and they are hereby authorized to permanently transfer the above sum of three hundred and ninety-three dollars and eleven cents, to the township fund of said township.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed February 21, 1878.

[House Bill No. 45.]

AN ACT

To authorize the council of the city of Urbana, Ohio, to make a contract with the Urbana water works for a supply of water for fire and other purposes, for a period not exceeding ten years, and to levy taxes to pay the water rents to become due by the terms of said contract.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the council of said city of Urbana, Ohio, be and are hereby authorized and empowered to enter into a contract with the Urbana water works, for a supply of water for fire and other purposes for a period not to exceed ten years, and the certificate of the city clerk on the back of said contract as required by section 663 of the municipal code, as amended April 8th, 1876, shall not be necessary to make said contract legal, valid, and binding.

SEC. 2. For the purpose of paying the water rents to become due by the terms of said contract, said council of said city are hereby authorized to levy a tax upon all the taxable property of said city, in addition to the amount already allowed by law, every year during the continuance of said contract, sufficient in amount each year to pay the water rents that will become due during such year, and the money so raised shall not be used for any other purpose.

SEC. 3. This act shall be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed February 21, 1878.

[House Bill No. 146.]

AN ACT

To authorize the village council of the incorporated village of Sabina, Clinton county, Ohio, to issue and sell bonds to raise money to pay an existing indebtedness.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the village council of the incorporated village of Sabina, Clinton county, Ohio, be and it is hereby authorized to issue and sell bonds to pay an existing indebtedness, incurred in the opening of Elm street, in said village, and in building a calaboose and engine house, as herein provided.

SEC. 2. That said council is hereby authorized to issue bonds, not exceeding in amount the sum of two thousand five hundred dollars, which may be sold for the purpose of raising money to pay an existing indebtedness, incurred in the opening of Elm street, in said village, and in the building of a calaboose and engine house, said bonds to be signed by the mayor and the clerk of said village, and to be registered by said clerk, and to be issued in sums of not less than fifty, nor more than two hundred dollars each, and bearing interest, payable annually, at a rate not exceeding seven per cent., the principal and interest to be paid at such time not exceeding five years from the date of issue, and in such amounts each year as the village council may direct: provided, said bonds shall not be sold for less than their par value.

SEC. 3. This act shall take effect from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed February 21, 1878.

[House Bill No. 104.]

AN ACT

For the relief of the board of education of the Berea union school district of Cuyahoga county, Ohio.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the board of education of the Berea union school district of Cuyahoga county, Ohio, be and they are hereby authorized to issue bonds, from time to time, at the discretion of said board, for the purpose of paying the present indebtedness of said union school district, and for no other purpose: provided, that the aggregate amount of such bonds, shall not exceed fifteen thousand dollars; said bonds to be signed by the president and clerk of said board of education, bearing interest, payable semi-annually, at a rate not exceeding seven per cent. per annum, none of the bonds issued under this act to be made payable at a later period than the year eighteen hundred and ninety-eight.

SEC. 2. That said board of education of said Berea union school district are hereby authorized to exchange an equal amount of such new bonds, authorized by this act, for bonds now outstanding, at not less than par, or they may sell any or all of the bonds authorized by this act at not less than par, and use the proceeds in the payment of the present bonded or other indebtedness of said school district. And no discount

brokerage, or commission shall be allowed to any person for the sale or negotiation of said bonds, nor interest or discount to any purchaser thereof.

SEC. 3. That for the purpose of paying said bonds so authorized to be issued by this act, and the interest accruing, from time to time, on the indebtedness of said school district, said board of education are hereby authorized to levy the necessary tax therefor upon all taxable property of the said Berea union school district, for each and every year during the period said bonds have to run: provided, that nothing in this act shall be construed to release the sureties of the said D. R. Watson from their liabilities upon his official bonds.

SEC. 4. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed February 21, 1878.

[House Bill No. 141.]

AN ACT

To authorize the council of the incorporated village of Prospect, in Marion county, to issue bonds to buy a fire-engine and build a fire-engine house for the use of said village.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the council of the incorporated village of Prospect, in Marion county, Ohio, be and is hereby authorized to issue the bonds of said village, in any sum, not exceeding two thousand dollars, bearing interest not exceeding seven per cent. per annum, payable semi-annually, and not to run longer than five years, for the purpose of defraying the expense of purchase of fire-engine and implements, and purchase of site and erection thereon an engine house for the use of said village.

SEC. 2. Said bonds shall be issued in such amounts, respectively, as will, in the judgment of said council, best subserve the negotiation and sale of the same, and shall not be sold for less than par value and accrued interest.

SEC. 3. The said council, to pay said bonds, and interest thereon, is hereby authorized to levy a tax, each year, in addition to the tax now authorized by law, not to exceed one-fifth the amount hereby authorized to be raised, for purposes mentioned in section one of this act, including the interest on same, upon the taxable personal property and real estate of said village, which shall be certified by the clerk of said village, to the auditor of said Marion county, and by said auditor, entered upon the duplicate of said village, and collected as other taxes are collected, and paid out on the order of the council, for the purposes specified in this act, and for no other purpose.

SEC. 4. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed February 27, 1878.

[Senate Bill No. 48.]

AN ACT

To authorize the city of Fremont to issue bonds and borrow money for the completion of city hall and fire-engine house.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the city of Fremont, Sandusky county, Ohio, be and it hereby is authorized to issue bonds, not exceeding twelve thousand ($12,000) dollars in amount, and of such denominations as said council may determine, not less than one hundred dollars nor more than one thousand dollars each, bearing interest at a rate not exceeding seven per cent. per annum, payable semi-annually; said bonds to be signed by the mayor and countersigned by the clerk of said city, and payable at such time, not exceeding ten years after date, as said council may determine: provided, that said bonds shall not be sold for less than their par value, and the money from the sale of said bonds to be applied to the completion of the city hall and engine house, on Fort Stephenson Park, in said city.

SEC. 2. That for the purpose of paying said bonds and the interest thereon as the same becomes due, the council is hereby authorized and empowered to levy and assess a tax upon all the taxable property of said city, in addition to the amount already allowed by law, every year during the period said bonds have to run, sufficient in amount each year to redeem that portion of the bonds issued in pursuance of this act that will fall due during such year, and the interest thereon; and the money so raised shall not be used for any purpose other than paying said bonds and the interest thereon: provided, that the question of issuing said bonds shall first be submitted to a vote of the qualified electors of said city, at some general or special election held in said city, ten days' notice whereof shall have been given by posting written or printed notices in four public places in said city, and if a majority of the votes cast at said election shall be in favor of issuing said bonds, the council shall have authority to issue the same, as hereinbefore provided.

SEC. 3. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed March 1, 1878.

[Senate Bill No. 63.]

AN ACT

To authorize the board of education of Ada union school district, Ada, Hardin county, Ohio, to issue bonds, and levy a tax for the payment of the same, to erect and furnish additional school buildings.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the board of education be and are hereby authorized and empowered to issue the bonds of the Ada union school district, of Hardin county, Ohio, not to exceed the amount of twenty thousand dollars, bearing interest at at the rate of seven per cent. per annum, payable semi-annually, signed by the president of the board and countersigned by its secretary, and re-

deemable in equal annual installments for a period not to exceed twenty years from the date thereof.

SEC. 2. That said bonds shall be sold by the said union school board, or under their direction, and in no case shall they be sold for less than the par value thereof.

SEC. 3. That the said bonds shall be issued in sums of fifty, one hundred, and five hundred dollars, as the said board may deem best.

SEC. 4. That the board of education of said Ada union school district are hereby authorized to levy a tax upon the taxable property of said Ada union school district sufficient to pay said bonds, and the interest thereon, as the same may become due.

SEC. 5. That before the said bonds shall be issued, and the tax levied as aforesaid, the board of education of said Ada union school district shall first submit the question of issuing said bonds, and the levying of a tax for the payment of the same, to the qualified electors of said union school district, at a general or special election, having first given ten days' notice of the same by posting up said notices in at least five public places in said union school district, and publishing in the papers published in the said union school district, said election to be conducted by any three members of the said board of education, as provided by law for holding state elections.

SEC. 6. That the electors voting at said election, shall have written on their ballots, "Issuing school bonds and levying a tax for the payment of the same—Yes," or "Issuing school bonds and levying a tax for the payment of the same—No," and if two-thirds of all the electors voting at said election upon the question submitted, shall vote "Issuing school bonds and levying a tax for the payment of the same—Yes," said bonds shall be issued, and a tax levied, as above provided.

SEC. 7. That the moneys arising from the sale of said bonds issued as aforesaid, shall be under the control of said board of education of Ada union school district, and shall be used for the purpose of erecting and furnishing additional school buildings upon the lands now owned by the North-western Ohio normal school.

SEC. 8. That the said board of education of Ada union school district, are hereby authorized and empowered to let, to the lowest responsible bidder, a contract for the erection of said buildings, as aforesaid, reserving the right to reject any or all bids.

SEC. 9. That the plans and specifications of said buildings, and the furnishing of the same, shall be mutually agreed upon by and between the proprietors and owners of the North-western Ohio normal school, and the board of education of the said union school district, before the said contract is let.

SEC. 10. That the title to said buildings erected, and the furniture purchased, under the provisions of this act, shall be and remain in the board of education of said Ada union school district: provided, that after said vote is taken as provided for by this act and if carried in favor of issuing said bonds, the said proprietors of the North-western Ohio normal school shall make a good and sufficient warranty deed for the land upon which the said building shall be erected, to the board of education of said Ada union school district before said building is com-

menced, and the entire control of said school shall be and forever remain in the board of education of said union school district.

SEC. 11. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed March 1, 1878.

[House Bill No. 256.]

AN ACT

To authorize the county commissioners of Auglaize county to borrow money to cover deficiency arising by reason of the defalcation in county treasury fund.

WHEREAS, The treasurer of Auglaize county, whose term of office terminated in September, 1877, was and still is a defaulter to the amount of about twenty thousand dollars, for which suit has been brought, and is now pending, by said county against said late treasurer and his sureties; and,

WHEREAS, An unprovided for expenditure of several thousand dollars has been incurred, by reason of rewards paid and expenses incurred in prosecuting the guilty parties, and will be further incurred by said county in further prosecuting other parties charged with complicity therein, and to recover back into the treasury the balance of the money taken, and which expenses so incurred, and to be incurred, are and will be greater than the levy now authorized by law to be made for county purposes, annually, is or will be sufficient to meet; and,

WHEREAS, By reason thereof, there exists a necessity for said county to borrow money, and for authority to make a greater levy for county purposes than is now authorized by law, until the money due by reason of said defalcation can be collected and the deficiency in county fund made up; therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the commissioners of Auglaize county be and they are hereby authorized to borrow not exceeding the sum of fifteen thousand dollars, for the purposes of paying the indebtedness and current expenses of said county, at a rate of interest not to exceed seven per cent. interest per annum, and on time not exceeding two years.

SEC. 2. That for the purposes of carrying into effect the first section of this act, the said commissioners are hereby authorized and empowered to issue bonds, not to exceed fifteen thousand dollars, bearing a rate of interest not exceeding seven per cent. per annum, to be of such denomination as the commissioners of said county may determine. The said bonds shall be signed by the county commissioners, and countersigned by the county auditor, and payable at such time and place as they may determine, not exceeding two years from the date thereof, the interest payable semi-annually, and not be sold for less than their par value.

SEC. 3. That for the year 1878, and for the purposes of paying said expenditures and meeting said deficiency in fund for county purposes, the commissioners of said county of Auglaize are hereby authorized to

levy on the taxable property of said county, in addition to that now authorized by law, not to exceed two mills on the dollar valuation.

SEC. 4. This act shall take effect and be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed March 1, 1878.

[House Bill No. 154.]

AN ACT

To authorize the commissioners of Lorain county to invest surplus funds in United States registered bonds.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the county commissioners of Lorain county are hereby authorized to invest any funds now in the treasury of said county, not required for current expenses, in United States registered bonds, and deposit the same with the county treasurer, until such time as the expenditures of said county shall require, whereupon said county commissioners are hereby authorized to convert said bonds, or any part thereof, into current funds.

SEC. 2. Nothing herein provided shall be construed to authorize or encourage levying or collecting taxes more than to meet current expenses of said county.

SEC. 3. This act shall take effect from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed March 2, 1878.

[House Bill No. 116.]

AN ACT

To authorize the village of Mechanicsburg, Champaign county, Ohio, to levy a tax and issue bonds for building a town-hall, engine-room and jail.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the council of the incorporated village of Mechanicsburg, Champaign county, Ohio, be and hereby is authorized to erect or contract for the building of a town-hall, to contain a mayor's office, store-room, engine-room, and a lock-up or village jail, and to levy a tax and issue bonds in payment of the same, as herein provided.

SEC. 2. For the purpose of paying for said town-hall building, the said council is hereby authorized to issue bonds, not exceeding eight thousand dollars in amount, which may be used in the payment of the contractor or contractors, or they may be sold by said council, as herein provided, as said council may deem the most advantageous to the in-

terests of the village. The bonds to be signed by the mayor and clerk of said village, and be duly registered by the clerk, and to be issued in denominations of not less than fifty nor more than five hundred dollars each, and bearing interest at a rate not exceeding eight per cent. per annum, interest payable annually; the bonds to be paid at such time, not exceeding ten years from the date of their issue, as said council may determine, and not to be sold, in any event, for less than their par value.

SEC. 3. That for the purpose of paying said bonds, and the interest thereon, as the same shall become due, the said council is hereby authorized and empowered to levy a tax on all the taxable property of said village, in addition to the tax now authorized by law, not exceeding (2) two mills on the dollar in any one year, and the money so raised, shall not be used for any other purpose, than for the payment of said bonds. and interest thereon: provided, the question of issuing bonds for the erection of said town-hall building, shall be first submitted to a vote of the qualified voters of said village, at any regular election to be held in said village after ten days notice shall have been given by posting written or printed notices in at least five of the most public places in said village, and a majority of the qualified voters so voting at said election, shall determine the question affirmatively or negatively as to the issuing of said bonds.

SEC. 4. The council of the said incorporated village of Mechanicsburg, having already purchased a lot on which to erect the town-hall building provided for in this act, and for the purpose of paying for the same have, by a levy, raised the amount of money necessary therefor, the action of the said council is hereby legalized to all intents and purposes as though specially provided for in this act.

SEC. 5. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed March 4, 1878.

[House Bill No. 174.]

AN ACT

To authorize the commissioners of Tuscarawas county to build one or more bridges, within the corporate limits of the village of New Comerstown, in said county.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the commissioners of Tuscarawas county, be and they are hereby authorized and empowered to build one or more turn, draw, or lifting bridges across the Ohio canal, within the corporate limits of the village of New Comerstown, in said county, at such height from water-line, in such manner and at such times as they, the said commissioners, may determine.

SEC. 2. That the trustees of Oxford township, in said county, or the town council of the village of New Comerstown, or both, the trustees of the township and the council of the village aforesaid, be and they are hereby required to enter into a sufficient bond of indemnification to the state of Ohio, for damages sustained, said bond to be made to the ac-

ceptance of the board of public works of Ohio, provided, that the written consent of the lessees of the canal be obtained, for the erection of such bridge or bridges.

SEC. 3. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed March 4, 1878.

[House Bill No. 234.]

AN ACT

To repeal an act entitled "an act requiring the trustees of Fairfield township, Tuscarawas county, to open a certain county road through said township," passed April 11, 1877. (O. L. vol. 74, p. 438.)

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That the above recited act be and the same is hereby repealed.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed March 4, 1878.

[House Bill No. 185.]

AN ACT

To authorize the trustees of Wellington township, in Lorain county, to purchase a site for a town hall, and to sell the town hall and site now owned by said township.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That the trustees of Wellington township, in Lorain county, are hereby authorized to purchase the town lot, owned by the First Congregational society of Wellington, for a site for a town hall, and are hereby authorized to sell and convey to said society the site on which the present town hall is located in said township, together with said hall.

SEC. 2. The said township trustees shall apply the proceeds of the sale of said town hall and site to the purchase of said lot, and are further authorized to levy a tax upon the taxable property of said township, not exceeding the sum of twenty-five hundred dollars, for the payment of the balance of the purchase price of said lot; and the trustees of said society and of said township are empowered to make, execute, and deliver all necessary conveyances to effect said sale: provided, that a majority of votes cast by the duly qualified electors of said township, at a general or special election, called for that purpose, by said township trustees, shall be in favor of said purchase and sale.

SEC. 3. The said township trustees, prior to making said purchase or sale, shall first submit the same to said electors, and for that purpose are

authorized to call a special election therefor, of which election they shall give public notice at least ten days prior thereto, by publishing the same in at least two consecutive numbers of any newspaper published in said township; and by posting in at least three of the most public places in said township said notices, which notices shall state the time, place, and between what hours said election shall be held; at which election the said electors shall cast printed or written ballots, which shall read, "For sale of town hall site and purchase of new site—Yes;" or, "For sale of town hall site and purchase of new site—No." Said election shall in all respects not herein provided be conducted according to the provisions of the statutes governing general elections in the state of Ohio.

SEC. 4. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed March 4, 1878.

[House Bill No. 110.]

AN ACT

To add additional territory to West Elkton school district, and to create West Elkton village district.

SECTION 1. *Be it enacted by the General Assembly of the state of Ohio*, That the following described territory, situated in the township of Gratis, Preble county, state of Ohio, shall constitute West Elkton village district in Gratis township, Preble county, Ohio. Beginning on the county line between the counties of Preble and Butler, at the south-east corner of the south-west quarter of section thirty-three (33), in said township, running thence west on the county line to the south-west corner of the south-east quarter of section thirty-two (32), thence north to the north-west corner of the south-east quarter of section twenty (20), thence east to the north-east corner of the south-west quarter of section twenty-one (21), thence south to the south-east corner of said quarter, thence east to the north-east corner of section twenty-eight (28), thence south to the south-east corner of the south-east quarter of section twenty-eight (28), thence west to the north-east corner of Nelson Holliday's land in section twenty-eight (28), thence south to the south-east corner of said Riley Giffords' land in section twenty-eight (28), thence west to the north-east corner of the north-west quarter of section thirty-three (33), thence south to the place of beginning.

SEC. 2. The present board of education of West Elkton school district in said township of Gratis, shall be and remain in office, and shall constitute the board of education of said village district as described in section one of this act, until the first Monday of April next, when the electors of said village district, after legal notice shall have been given for an election, shall proceed to elect a board of education of six members—two to serve for one year, two to serve for two years, and two to serve for three years, from the first Monday of April, 1878, and at each

annual election thereafter there shall be elected two members of said board, who shall hold their office three years, or until their successors are elected and qualified.

SEC. 3. The said village district shall be entitled to all school property now belonging to West Elkton school district, and the title thereto is hereby vested in the board of education of said village district, and the said village district shall be entitled to receive all the moneys arising from taxation or otherwise, and that now belongs or may hereafter belong to the West Elkton school district, according to the enumeration taken in 1877, of children of proper school age, and that said village district shall be entitled to all the rights and privileges, and subject to all the provisions of the laws now in force, or that may hereafter be in force in this state regulating village districts.

SEC. 4. This act shall be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Sena'e.

Passed March 5, 1878.

[House Bill No. 13.]

AN ACT

To change the surname of person therein named.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the surname of Louis Philip Agnes, a resident of Lawrence township, Tuscarawas county, Ohio, be so changed that the name of said person will read Louis Philip Lab.

SEC. 2. That this act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed March 7, 1878.

[House Bill No. 49.]

AN ACT

To authorize the incorporated village of Port Clinton, Ohio, to transfer funds.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the council of the incorporated village of Port Clinton, Ohio, be and they are hereby authorized to transfer one hundred and fifty ($150.00) dollars, collected for poor funds, and now in the treasury, to the cemetery funds of said village.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed March 7, 1878.

[House Bill No. 117.]

AN ACT

To authorize the trustees of Troy township, Richland county, Ohio, to join with the council of the incorporated village of Lexington, in the construction of a town hall for the joint use of said township and village.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the trustees of the township of Troy, Richland county, Ohio, and the council of the incorporated village of Lexington, be and they are hereby authorized to join in the purchase of grounds and in the construction of a town hall in the said village of Lexington, for the joint use of said township, village, and the election precinct in which said village is situated, in such manner as the said trustees and council shall agree and stipulate in regard to such joint occupancy.

SEC. 2. That said trustees and village council be and they are hereby authorized, for the purpose of building said town hall in said village, to issue bonds of said township, in sums not less than fifty or more than one hundred dollars each, bearing seven per cent. interest, payable semi-annually, which bonds shall be made payable in one, two, three, four, and five years from date, in equal semi-annual installments: provided, that said bonds shall not be disposed of for less than their par value, said bonds to be signed by the said trustees and the clerk of said township, and the said trustees shall, when it shall become necessary to levy a tax to pay said bonds and interest thereon, certify that fact to the auditor of said Richland county, and said auditor shall cause said sum so certified by said trustees to be levied upon the taxable property of the election precinct in which said village is situated, and the same shall be collected like other taxes, and shall be applied to the payment of said bonds and interest: provided, that the total amount of said bonds so issued shall not exceed the sum of five thousand dollars; and provided further, that said trustees shall first submit the question of building such town hall and levying said tax for the above named purpose, to the qualified electors of said election precinct, at a general or special election, having first given at least fifteen days notice of the same, by posting up said notices in at least five of the most public places in said election precinct.

SEC. 3. The electors voting at said election shall have written or printed on their tickets, "Tax for town hall purposes—Yes," or, "Tax for town hall purposes—No," and if a majority of all the electors voting at said election, upon the question submitted, shall vote tax, yes, said town hall shall be built, and tax levied as above provided.

SEC. 4. If the said trustees and village council shall enter into an agreement as provided for by this act, the said agreement shall be reduced to writing, and shall show—

First—The amount of money put into or to be put into such hall by said trustees and said village council shall be separately stated.

Second—The part or parts, room or rooms of such hall to be separately owned by such trustees and such village council, and whether to be occupied jointly or severally.

Third—As to the legal title to the land or lot on which such hall shall be constructed, and how and in whom such legal title shall be held.

Fourth—Any other agreement in regard to procurement of purchase of grounds, construction, management, custody or control of such town hall, and such agreement shall be signed in duplicate by said trustees and village council, one copy of which shall be delivered to the trustees of said

township, and one copy to the council of said village, and such written agreement shall be evidence of the respective interests and rights of said parties in and to such hall.

SEC. 5. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed March 7, 1878.

[House Bill No. 228.]

AN ACT

For the relief of William J. Berne, Charles Stanley, John B. Schroder, John M. Mueller, assignee of Buente and Phillips and Dunn and Witt.

WHEREAS, It is claimed by William J. Berne, Charles Stanley, John B. Schroder, and John M. Mueller, assignee of Buente and Phillips and Dunn and Witt, of Cincinnati, that being sub-contractors, furnishing work and materials for the county infirmary building, recently built by the county of Hamilton, and being unwilling, owing to the insolvency of the contractor to prepare such work and materials, since to do so would involve the loss of both labor and materials, said parties were, nevertheless, induced to do so by assurances of the superintendent and architect of said infirmary, duly appointed and acting under section twelve of the act relative to infirmary buildings (66, O. L., p. 56), that there was money in the county treasury applicable to the purpose; and,

WHEREAS, The said parties relying upon such assurances and the withholding payment to the contractor, until their claims for said work and materials had been satisfied, prepared the materials for and did work and labor toward the erection of said infirmary building, and thereafter ascertained that in the meantime the county commissioners, through mistake, had paid the contractor in full, and suffered him to overdraw his account, thus depriving said parties of all remedy against the county funds; and,

WHEREAS, It has been judicially determined that said county is not legally liable for such representations and acts of its officers, but that it has received and is now enjoying the benefits of said work and materials; now, therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That the claims of said parties may be submitted to the commissioners of Hamilton county, to be by them adjusted and settled upon just and equitable principles; and said commissioners if satisfied that said county has had the use and benefit of such work and materials in said building, and that said parties have lost the same as aforesaid, are authorized and directed to pay, or cause to be paid, out of any funds in the county treasury, not otherwise appropriated, what is equitably due to each of said parties therefor; and the auditor of said county shall draw the necessary war-

rants, or orders for payment therefor upon the county treasurer, who is authorized and directed to pay the same accordingly.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed March 7, 1878.

[House Bill No. 136.]

AN ACT

To divide Pleasant township, Henry county, into two election precincts.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the township of Pleasant, Henry county, be and the same is hereby divided into two election precincts for all state, county, and township purposes, one of which precincts shall be called the Holgate precinct, and shall consist of the following described territory, to wit: All of sections one (1), two (2), three (3), ten (10), eleven (11), and twelve (12), of said Pleasant township.

SEC. 2. All of that portion of Pleasant township not included in section one of this act, shall constitute the other election precinct, and shall be called the New Bavaria precinct.

SEC. 3. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President pro tem. of the Senate.

Passed March 13, 1878.

[House Bill No. 143.]

AN ACT

To authorize the board of education of the city of Portsmouth to borrow money to complete a school-house now being erected in said city, and to issue bonds for the payment of the same.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the board of education of the city of Portsmouth, is hereby authorized to issue the bonds of the said district, not exceeding in amount the sum of fifteen thousand dollars, to provide money for the purpose of completing the school-house now being constructed in said city.

SEC. 2. Said bonds shall be signed by the president, and countersigned by the clerk of said board, and may be in denominations of not less than one hundred dollars, nor more than one thousand dollars, payable in equal semi-annual installments, not more than fifteen years from the date thereof, bearing interest not exceeding seven per cent. per an-

num, payable semi-annually, principal and interest payable at such place as the said board may direct in issuing the same: provided, however, that said bonds shall not be sold at less than their par value.

SEC. 3. For the purpose of paying the interest on said bonds, and the principal of the same, as they become due, there shall be annually levied a sufficient tax upon all the taxable property in said city of Portsmouth, in addition to the taxes now by law to be levied therein.

SEC. 4. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed March 13, 1878.

[House Bill No. 260.]

AN ACT

To authorize the board of commissioners of Wayne county to build a court-house.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the board of commissioners of Wayne county be and they are hereby authorized to build a court-house in said county, on the lot on which the present court-house stands, at a cost not exceeding seventy-five thousand dollars.

SEC. 2. To carry out the provisions of this act, said commissioners are hereby authorized, by taxation, at a rate not exceeding one mill per annum on the dollar of the valuation of the property of said county subject to taxation, to raise the amount of money necessary for that purpose, not exceeding the sum above named; and in anticipation of the collection of such taxes, said commissioners shall have power to issue the bonds of said county, in sums of not less than one hundred dollars, payable at the treasurer's office of the county, within ten years from their date, and redeemable at the pleasure of said commissioners at any time after four years from their date, with interest from date at the rate of six per centum per annum, payable semi-annually, and the bonds so issued shall not be sold at less than their par value.

SEC. 3. The said bonds shall be issued and signed by said commissioners, and countersigned by the county auditor, who shall keep and preserve a record of the bonds so issued, and said bonds shall have such coupons or interest warrants attached thereto as said commissioners may direct, and said bonds shall be numbered consecutively, and be made negotiable.

SEC. 4. Said commissioners shall, annually, at their June session, levy an amount of taxes sufficient to pay the interest on said bonds until the fourth year after their date, when, and each year thereafter, they shall levy taxes sufficient to pay the interest on said bonds, and at least one-sixth of the principal thereof.

SEC. 5. Said commissioners may, in their discretion, advertise for proposals for the entire work, at a single job, to the lowest responsible bidder, and receive and accept bids therefor.

SEC. 6. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed March 14, 1878.

[House Bill No. 288.]

AN ACT

For the relief of Thornton P. Crowell.

WHEREAS, Thornton P. Crowell was the duly elected and qualified treasurer, on the 3d day of March, 1877, of Orange township, Ashland county, Ohio, and as such treasurer had on deposit in the citizens' savings bank of Ashland, Ohio, the sum of $1,753.62, and secured by him as such treasurer, belonging to said township; and on said 3d day of March, 1877, the said Citizens' Savings bank of Ashland failed, and its assets went into the hands of a receiver, and will not be able to pay but a small dividend upon its indebtedness, and the said Thornton P. Crowell is not able, without great trouble, to pay said loss of $1,753.62; and,

WHEREAS, A large number of the tax-payers of said township, by petition to the general assembly, represent that said Thornton P. Crowell acted with reasonable business prudence in making such deposit; that no safe had been provided for the safe keeping of the funds of said township, and that the said Thornton P. Crowell was therefore not in any manner at fault in making such deposit, and ask that this general assembly do extend relief to said Thornton P. Crowell; therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the trustees of Orange township, Ashland county, Ohio, are hereby authorized to release said Thornton P. Crowell and his sureties on his official bond, and from all liabilities for the payment of said one thousand seven hundred and fifty-three dollars and sixty-two cents, so as aforesaid deposited with the Citizens' Savings bank of Ashland, Ohio: provided, that before said release shall be made, said Thornton P. Crowell shall assign and transfer unto the trustees of said Orange township his certificate of deposit, book account, and entire claim held by him against said bank for said amount of one thousand seven hundred and fifty-three dollars and sixty-two cents, the amount so deposited by him; and further, the trustees of said Orange township are hereby authorized and required to submit the question of releasing the said Thornton P. Crowell from his liability on his said bond to the qualified electors of said township at the April election of 1878, ten days previous notice having been given of such submission by said trustees, by posting notices in three public places, in different portions of said township, and if two-thirds of the electors voting at said election shall vote in favor of releasing the said Thornton P. Crowell, on his official bond as treasurer of said township, from the payment of said sum of one thousand seven hundred and fifty-three dollars and sixty-two cents, then the said Thornton P. Crowell and his sureties shall not hereafter be held liable to make up said money to said township.

SEC. 2. That the electors of said township voting at said election shall place on their ballots either the words, "For release," or "Against release," and if two-thirds of all the electors voting at said election shall vote "For release," then said Thornton P. Crowell and his sureties shall not be liable to make up said money to said township, and the trustees of said township are hereby authorized and required to levy and assess a tax on the taxable property of said township, not exceeding said sum of one thousand seven hundred and fifty-three dollars and sixty-two cents, to be applied to the same special fund or funds, and for the same purposes that said funds were to have been applied.

SEC. 3. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed March 14, 1878.

[House Bill No. 93.]

AN ACT

Releasing Wayne township, Belmont county, from the operations of an act passed March, 1831, and took effect June 1, 1831 (S. & C. statutes, p. 1577), providing for the election of three trustees and treasurer for Section No. 16, school lands.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That town six, range five (Wayne township, Belmont county), be released from the provisions of the above recited act, and that the trustees and treasurer of said township be authorized to perform all the duties pertaining to moneys arising from rents of section number sixteen: Provided, that nothing in this act shall be construed to divert the proceeds arising from said section sixteen, school lands, from the school funds.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed March 14, 1878.

[House Bill No. 193.]

AN ACT

To authorize the trustees of Anderson township, Hamilton county, Ohio, to transfer money from the poor fund to road fund and from township fund to road fund.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the trustees of Anderson township, Hamilton county, Ohio, be and they are hereby authorized to permanently transfer from the township fund of said township the sum of one thousand and ninety-three dollars ($1093), to road fund of said township; also the sum of two hundred

and fifty dollars ($250) from poor fund to township fund; from poor fund to road fund, the sum of one hundred and fifty-six dollars ($156); from stone fund to township fund, two hundred and forty-three [dollars] ($243); from bridges and fills fund to township fund, the sum of two hundred and sixty-four dollars ($264).

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed March 14, 1878.

[House Bill No. 203.]

AN ACT

To authorize the council of the incorporated village of Green Springs to issue bonds for the erection and completion of a town hall and engine house.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the council of the incorporated village of Green Springs, Seneca and Sandusky counties, Ohio, be and the same is hereby authorized to issue the bonds of said village in any sum not exceeding twenty-five hundred dollars ($2500), bearing interest at the rate of seven per cent. per annum from date of issue, for the purpose of defraying the expenses of erecting and completing a town hall and engine house for the use of said village.

SEC. 2. Said bonds shall be issued in such amounts respectively as will in the judgment of said council best subserve the negotiation and sale of the same.

SEC. 3. The said council of said incorporated village is hereby authorized to levy a tax in accordance with law upon the taxable property and real estate of said village, to be certified to the auditor of the counties of Seneca and Sandusky, and to be collected as other taxes for village purposes.

SEC. 4. Said bonds shall not be sold for less than their par value.

SEC. 5. This act shall take effect and be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed March 14, 1878.

[House Bill No. 238.]

[AN ACT]

To change the name of St. John's English Evangelical Church of Zanesville, in the county of Muskingum, Ohio.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the name of the St. John's First English Evangelical Church of Zanes-

ville, in the county of Muskingum, be changed to St. John's English Evangelical Lutheran Church of Zanesville.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed March 15, 1878.

[House Bill No. 199.]

AN ACT

To enable the commissioners of Hamilton county, Ohio, to make a fill from the west end of the bridge, across the Great Miami river, below the mouth of White Water river, to the Indianapolis, Cincinnati and Lafayette railroad station, at Elizabethtown, White Water township, Hamilton county, Ohio.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That the commissioners of Hamilton county, be and they are hereby empowered to condemn certain lands in White Water township, Hamilton county, bordering on the road leading from the west end of the bridge across the Great Miami river, below the mouth of the White Water river, to the Indianapolis, Cincinnati and Lafayette railroad station, at Elizabethtown, Hamilton county, Ohio, the land condemned to be of sufficient extent to construct a fill of proper heighth, so as to be above highwater mark; that if the present width of said road is insufficient to allow of such fill, it shall be lawful for said commissioners to appropriate lands on either side, for the widening of said road: provided, that such proceedings to condemn said lands shall be the same as is provided for laying out new roads under existing laws.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed March 15, 1878.

[Senate Bill No. 75.]

AN ACT

For the relief of James Webster and L. H. Wise.

WHEREAS, On the 21st day of December, 1871, the auditor of state sold, and the governor conveyed, to James Webster and L. H. Wise the following lands in Paulding county, Ohio, viz.: The north half of the northeast quarter of section ten (10), township two (2), north of range four (4) east, at an appraised value of one hundred and sixty dollars, and which amount said purchasers then paid to the state of Ohio; and,

WHEREAS, It appears that on the 21st day of April, 1854, the governor of Ohio conveyed said premises to the heirs of one John Bishop (deceased), in accordance with law, and that the state conveyed no title by its said deed to James Webster and L. H. Wise; therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That there be and hereby is appropriated out of any moneys not otherwise appropriated out of the sinking fund the sum of one hundred and sixty dollars, with interest thereon from December 21st, 1871, amounting to fifty-nine dollars and twenty cents, which is hereby directed to be refunded to James Webster and L. H. Wise: provided, that said parties first execute to the state a quit-claim deed.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed March 18, 1878.

[House Bill No. 166.]

AN ACT

To divide Greenfield township, Fairfield county, into two election precincts.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the township of Greenfield, Fairfield county, in this state, be and the same is divided into two election precincts, as follows: The first shall be called Carroll precinct, and shall include the territory following: Section three, four, five, six, seven, eight, nine, seventeen, eighteen, nineteen, and twenty in said township. The second shall consist of the balance of the territory of said Greenfield township, and be known as Greenfield precinct.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed March 18, 1878.

[House Bill No. 248.]

AN ACT

Authorizing the trustees of Ridgeville township, Lorain county, Ohio, to transfer certain funds therein named to the general fund of said township.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the trustees of Ridgeville township, Lorain county, Ohio, are hereby authorized to transfer the balance remaining in the treasury of said township of a fund levied for the purpose of erecting a cemetery vault, to the general fund of said township.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed March 18, 1878.

[Senate Bill No. 95.]

AN ACT

To authorize the township trustees of Hudson township, Summit county, Ohio, to raise money and to build a town hall.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the township trustees of Hudson township, Summit county, Ohio, shall, after written notices shall be posted up for ten days in three conspicuous places in said township, submit to the qualified voters of said township the question of building a town hall, and upon an affirmative vote of a majority of those voting at said election on said question, the township trustees shall issue bonds not exceeding in amount five thousand ($5000) dollars, bearing interest at a rate not exceeding seven per cent., payable semi-annually, which bonds may be used in payment of the contractor or contractors for the building of said town hall, or may be sold as may seem most advantageous to the interest of said township.

SEC. 2. That for the purpose of paying said bonds and interest thereon, the township trustees are hereby authorized and empowered to levy a tax on all the taxable property of said township, in such amounts annually as will be sufficient to pay the principal and interest on said bonds as they become due: provided, that the amount of tax levied each year shall not exceed two and one-half mills on the dollar valuation of the taxable property; and provided further, that the money so raised shall be used for no other purpose.

SEC. 3. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed March 20, 1878.

[Senate Bill No. 111.]

AN ACT

For the relief of John H. Depler.

WHEREAS, John H. Depler was the duly elected and qualified treasurer, on the 3d day of March, 1877, of Perry township, Ashland county, Ohio, and as such treasurer had on deposit in the Citizens' Savings bank of

Ashland, Ohio, the sum of two thousand dollars ($2,000), and secured by him as such treasurer, belonging to said township; and on said 3d day of March, 1877, the said Citizens' bank of Ashland failed, and its assets went into the hands of a receiver, and will not be able to pay but a small dividend upon its indebtedness, and the said John H. Depler is not able without great trouble to pay said loss of $2,000; and

WHEREAS, a very large majority of the tax payers of said Perry township, by petition to the general assembly, represent that said John H. Depler acted with reasonable business prudence in making such deposit; that no safe had been provided for the safe keeping of the funds of said township, and that the said John H. Depler was therefore not in any manner at fault in making such deposit, and ask that this general assembly do extend relief to said John H. Depler; therefore

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the trustees of Perry township, Ashland county, Ohio, are hereby authorized to release said John H. Depler, and his sureties on his official bond, from all liabilities for the payment of said two thousand dollars, as aforesaid deposited with the Citizens' Savings bank of Ashland, Ohio: provided, that before said release shall be made, said John H. Depler shall assign and transfer unto the trustees of said Perry township his certificate of deposit, book account, and entire claim held by him against said bank for said two thousand dollars, the amount so deposited by him; and further, the trustees of said Perry township are hereby authorized and required to submit the question of releasing the said John H. Depler from his liability on his said bond to the qualified electors of said township, at the April election of 1878, ten days' previous notice having been given of such submission by said trustees, by posting notices in three public places, in different portions of said township: and if two-thirds of the electors voting at said election shall vote in favor of releasing the said John H. Depler on his official bond as treasurer of said township from the payment of said sum of $2,000, then the said John H. Depler and his sureties shall not hereafter be held liable to make up said money to said township.

SEC. 2. That the electors of said township voting at said election shall place on their ballots either the words "for release," or "against release;" and if two-thirds of all the electors voting at said election shall vote "for release," then said John H. Depler and his sureties shall not be liable to make up said money to said township; and the trustees of said township are hereby authorized and required to levy and assess a tax on the taxable property of said township, not exceeding the said sum of $2,000, to be applied to the same special fund or funds, and for the same purposes that said funds were to have been applied.

SEC. 3. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed March 20, 1878.

[House Bill No. 261.]

AN ACT

To provide for the erection of a town hall and place for holding elections in the town of Vermillion, Erie county, Ohio, and to repeal an act providing for the same, passed April 12th, 1869 (Vol. 66, O. L., p. 376, 377).

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the trustees of the township of Vermillion, in Erie county, are hereby authorized to erect a town hall in the village of Vermillion, to be used as a hall for said village, and for holding elections and meetings of the township and school officers of the township therein, by the township, at a cost not exceeding the sum of fifteen thousand dollars ($15,000), and to provide the necessary funds for said building, said trustees may negotiate a loan, the amount of money necessary, and to secure the payment of such loan, may issue the bonds of said township for such sums, not less than fifty dollars each, as they may deem advisable, payable at such times as they may determine upon, not exceeding in any case the term of five years from date. Said bonds in no case to be sold for less than their par value, and bear interest not exceeding seven per cent., payable annually, the bonds to be signed by at least two of the trustees and countersigned by the clerk of said township, who shall keep and preserve a record of the same, which record shall show the amount, date, time payable, rate of interest, and persons to whom payable, of each and every bond so made and sold: provided, that prior to any action being taken under the authority of this act, the legal voters of said township and village, shall have sanctioned the same by a majority vote, at some regular election held in said township.

SEC. 2. The trustees of said township shall levy a tax on all the taxable property of said township, including said village, sufficient to pay, and for the purpose of paying the amount of said bonds and interest, the same to be levied annually from and after the issuing of said bonds, sufficient to pay each year the amount to fall due that year or before the tax for the ensuing year can be levied and collected, until the entire amount of bonds and interest shall be paid, the tax to be levied and collected as other taxes are levied and collected, and the money when so collected shall be paid on said bonds, as the interest or principal, or both, fall due.

SEC. 3. That said act passed April 12th, 1869 (Vol. 66, O. L., pages 376 and 377), be and is hereby repealed, and this act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed March 21, 1878.

[House Bill No. 75.]

AN ACT

To establish a sub-school district in Olmsted township, Cuyahoga county.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the lands hereinafter described, being and lying in the township of Olmsted, Cuyahoga county, shall constitute a sub-school district (to be known

as sub-school district No. eight (8) of said township); commencing at the south-west corner of Olmsted township, Cuyahoga county; thence east to the east line of lands owned by John Chamberlain; thence north to the north line of tract three (3) of said township; thence west to the west line of said township; thence south on the county line to the place of beginning.

SEC. 2. That it shall be the duty of the township clerk of said township, within ten days after being notified of the passage of this act, to cause it to be posted in at least five conspicuous places within said district a notice in the usual form, notifying the voters of said sub-school district of an election for three school directors, who shall hold their office as follows: One for one year, one for two years, and one for three years, from the third Monday in April, 1878, and until their successors are elected and qualified, in accordance with section twenty-seven of an act for the reorganization and maintenance of common schools, passed May 1, 1873; which notice shall be posted at least ten days previous to the holding of said election.

SEC. 3. That it shall be the duty of the board of education of said township to purchase a site, and cause to be erected thereon, a school-house sufficiently large to accommodate the wants of said sub-school district.

SEC. 4. That to enable said board of education to fully carry out the provisions of section three of this act they may issue bonds, and borrow money thereon, in any amount not to exceed two thousand dollars, said bonds bearing interest at a rate not exceeding seven per centum per annum.

SEC. 5. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed March 22, 1878.

[Senate Bill No. 56.]

AN ACT

Authorizing the board of education of school district No. 1, Paris township, Union county, Ohio, to borrow money to pay indebtedness incurred in building school-house, and levy a tax for said purpose.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That the board of education of school district number one (1), Paris township, Union county, Ohio, be and they are hereby authorized to issue bonds not exceeding in amount five thousand dollars ($5000), to pay debt incurred in the erection, construction, and furnishing of new school building in said district, said bonds to be signed by the president and clerk of said board of education, and to be in sums of not less than five hundred dollars ($500) each, bearing interest at a rate not exceeding seven per cent. per annum, the principal and interest of said bonds to be payable as said board of education may direct, not exceeding ten years from the time of issuing the same: provided, said bonds shall not be sold for less than their par value.

SEC. 2. That for the purpose of paying said bonds, and the interest thereon as the same shall become due, the said board of education is hereby authorized and empowered to levy a tax on the taxable property of said school district number one (1), Paris township, Union county, Ohio, in such amounts annually, commencing with the year 1878, as will be sufficient to pay principal and interest of said bonds as they may become due in each year, as said board of education shall determine, and the money so raised shall not be used for any other purpose than to pay said bonds or debt and the interest thereon.

SEC. 3. This act shall be in force and take effect from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed March 25, 1878.

[Senate Bill No. 42.]

AN ACT

To amend section one of an act entitled "an act to authorize the city council of Newark and the county commissioners to unite in building a sewer in said city, and to provide the necessary funds therefor," passed April 30th, 1877. (O. L., vol. 74, p. 492.)

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the first section of the above recited act of April 30th, 1877, be so amended as to read as follows:

Section 1. That the city council of the city of Newark, Ohio, be and they are hereby authorized and empowered to unite with the county commissioners of Licking county, Ohio, in the construction of a main sewer, for the joint use and benefit of said city, and of the new court-house, now being erected in the court-house square in said city, said sewer to be constructed in such street or streets of said city as the city council may determine.

SEC. 2. That the first section of the act hereby amended be and the same is hereby repealed.

SEC. 3. This act shall be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed March 25, 1878.

[House Bill No. 294.]

AN ACT

For the relief of D. V. Dingman and H. H. Sprague.

WHEREAS, on the 30th day of May, 1877, Hon. P. V. Herzing, acting commissioner of the board of public works, reported to the auditor of state, for sale under the provisions of an act, passed April 29th, 1872, (vol. 69, page 194), as amended March 1st, 1877, (vol. 74, page 36), the

following lots in the corporation of Sidney, Ohio, viz.: Tract No. 1, between lots Nos. 247 and 248 on west, and 222 and 223 on the east; tract No. 3, east of lots Nos. 249 and 250; tract No 4, west of lot No. 222; and,

WHEREAS, said lots were sold at public sale by the auditor of state, on the 19th day of October, 1877, to D. V. Dingman and H. H. Sprague, for a sum aggregating in amount four hundred and forty-four dollars, who paid at date of sale one-fourth part of the purchase money in hand, to wit: one hundred and eleven dollars; and,

WHEREAS, on the 13th day of February, 1878, Hon. J. C. Evans, acting commissioner of third division public works, addressed the auditor of state that of "record" there was no evidence on file in the office of the board or within his reach, that the state ever owned said lots, and stating that it would be proper to declare the sale void.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That there is appropriated out of any moneys not otherwise appropriated out of the sinking fund, the sum of one hundred and eleven dollars, with interest thereon from the 19th day of October, 1877, amounting to two dollars and sixty-two cents, which is hereby directed to be refunded to said D. V. Dingman and H. H. Sprague.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed March 26, 1878.

[House Bill No. 74.]

AN ACT

To create a special school district of sub-district number four (4) in Dover township, Fulton county, Ohio.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That so much territory as is included within the limits of sub-district number four (4) of Dover township, Fulton county, Ohio, be and the same is hereby created a special school district for school purposes: provided, however, that a majority of the electors residing in said territory shall vote in favor of a special school district at an election to be held in the following manner:

SEC. 2. Written notices shall be posted, for ten days, in three of the most public places in said territory, signed by at least six resident electors of said proposed special school district, requesting the qualified electors thereof to assemble on a day and at an hour and place designated in said notice, then and there to vote for or against the creation of said special school district. The electors assembled at the time and place designated in said notice, shall appoint a chairman and two clerks, who shall be judges of said election, which shall continue at least two hours, and shall not close before four o'clock P.M. The electors in favor of the proposed special school district, shall write or print upon their ballots, "special school district," and those opposed thereto, "no special school district," and a majority of the ballots so cast shall determine the question whether or not the said proposed special school district shall be created.

SEC. 3. Should a majority of the ballots of said election be found in favor of the special school district as aforesaid, the electors shall at once proceed to elect three members of the board of education, one for one year, one for two years, and one for three years, from the third Monday of April next thereafter, who shall hold their offices for the terms specified, and until their successors are elected and qualified. The said special school district shall be entitled to all the school property within such territory; and the title thereto is hereby vested in the board of education of said special school district.

SEC. 4. The said special school district shall be entitled to and receive their proportionate share of the school funds, and the funds levied for school-house and incidental expenses in accordance with the enumeration of 1877, of children who are entitled to attend schools; said funds being those now collected or already levied and not collected, within the county or township treasury.

SEC. 5. The said special school district shall be governed in all respects by such laws as are now or may hereafter be in force relating to special school districts.

SEC. 6. This act shall take effect and be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed March 26, 1878.

[Senate Bill No. 129.]

AN ACT

For the relief of W. J. Jacobs and his sureties.

WHEREAS, W. J. Jacobs was, at the April election, A.D. 1877, elected treasurer of Pleasant township, Brown county, Ohio, and John Carrigan, F. J. Lewis, D. Tarbell and F. J. Phillips became his sureties as such treasurer; and,

WHEREAS, The said W. J. Jacobs as such treasurer, was, by the trustees and school board of said township, directed to deposit the township and school funds of said township in the bank of F. J. Phillips & Co., which bank has since such deposit failed, when $1,774.90 of said township and school funds was so deposited therein; therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the township trustees of Pleasant township, Brown county, Ohio, be and they are hereby authorized to release W. J. Jacobs and his said sureties on his official bond, as such bondsmen, from the payment of said sum of $1,774.90 so deposited in said bank: provided, that before said release shall be made, said W. J. Jacobs shall assign and transfer to said township trustees his claim against the said bank of F. J. Phillips & Co., or F. J. Phillips individually, for and on account of said money so by him deposited; and also, provided further, that nothing in this act contained shall be construed or held to in any way release said F. J. Phillips from his personal liability to pay said money so deposited; and also, provided that before said release shall be made, the question shall be submitted

to the qualified electors of the said township, at some general township or special election, notice of which shall be given at least ten days prior thereto, by putting up posters in three public places in said township, and two-thirds of the electors voting thereon at said election shall vote in favor thereof.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed March 26, 1878.

[House Bill No. 269.]

AN ACT

Creating a special school district in Palmyra township, Portage county.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the territory hereinafter described be and by this act is formed into a special school district, including the following territory, to wit: commencing at the north-east corner of land owned and deeded to Ann Gilbert, in division four, and lot twenty-four of said township of Palmyra; then on a line running south on the center of the highway one and three-fourths of a mile; thence west two miles to the center of the north and south highway; thence north along the center of said highway one and three-fourths of a mile to the center of an east and west highway; thence east two miles to the place of beginning.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed March 26, 1878.

[House Bill No. 226.]

AN ACT

To authorize the city council of the city of Pomeroy, Ohio, to sell certain lands therein named, and to appropriate the proceeds thereof to the payment of the general indebtedness of said city.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the city council of the city of Pomeroy, Ohio, be and is hereby authorized to sell on such terms as said council may provide, a certain tract of land, known as "Locust Grove Cemetery," containing about eighty acres, the same having been purchased by said city for cemetery purposes, excepting such part of the same, not exceeding five acres, which said council may deem necessary for pest house and cemetery purposes, and appropriate the proceeds of said sale to the payment of the general indebtedness of said city.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed March 26, 1878.

[Senate Bill No. 93.]

AN ACT

To authorize the trustees of Center township, Monroe county, Ohio, to levy a tax to pay a bond issued for local bounty of George Drake.

WHEREAS, George Drake, who on the 4th day of January, A.D. 1864, enlisted in the military service of the United States, and was credited as a recruit to Center township, Monroe county, Ohio, for which he never received any local bounty; and,

WHEREAS, The trustees of said township, on the fourth day of November, A.D. 1877, issued a bond payable to the order of said George Drake, for the sum of one hundred dollars, in payment of said local bounty; therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the trustees of said township of Center, in Monroe county, Ohio, be and they are hereby authorized to levy a tax upon the taxable property of said township, not exceeding the sum of one hundred and twelve dollars, to pay the principal and interest of said bond.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed March 26th, 1878.

[House Bill No. 217.]

AN ACT

For the relief of George N. Woodward.

WHEREAS, George N. Woodward was in the spring of A.D. 1877, appointed treasurer of the incorporated village of Georgetown, Brown county, Ohio, and was by law made custodian of the funds of said village; and,

WHEREAS, The town council of said incorporated village having failed to supply their treasurer with a safe and proper means for keeping their funds, and when the said George N. Woodward was required by the treasurer of Brown county aforesaid to receive the funds of said incorporated village, he, the said George N. Woodward, deeming it prudent, and for the best interests of said incorporated village, pursued the course custo-

mary with his predecessors, and deposited said funds with the old established banking house of F. J. Phillips & Co., at Georgetown, Ohio, for safe keeping, and for the use of said incorporated village; and,

WHEREAS, The said banking house of F. J. Phillips & Co., in the month of November, A.D. 1877, became insolvent and suspended payment, and on the third day of December, 1877, made an assignment for the benefit of their creditors, having in their possession at the time of such failure four hundred and sixteen dollars and fifteen cents belonging to said incorporated village of Georgetown; therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That at the next general or special election, the town council of the incorporated village of Georgetown, Brown county, Ohio, are hereby authorized, and it is made their duty to notify the qualified electors of said incorporated village that they will be called upon to vote on the question of relief to said George N. Woodward and sureties at such election, and that it is further provided, that said town council of the incorporated village of Georgetown are hereby required to give at least ten days' notice thereof preceding such election, by posting said notice in at least five public places in said incorporated village of Georgetown. The ballots at said election shall be voted in form, as follows: "For relief to George N. Woodward, Yes;" or "For relief to George N. Woodward, No;" and if two-thirds of the votes cast at said election, shall vote for relief to George N. Woodward, yes, then the town council of said incorporated village shall levy a tax on the taxable property of said village for the amount lost by said deposit with F. J. Phillips & Co., and certify the same to the auditor of Brown county as other taxes.

SEC. 2. That in case said relief is voted to the said George N. Woodward and his sureties, it is provided that, before release shall be made, the said George N. Woodward shall assign to the town council, for the use of the incorporated village of Georgetown, his claim against said F. J. Phillips & Co., for the money by him deposited as aforesaid.

SEC. 3. This act shall take effect and be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed March 26, 1878.

[House Bill No. 257.]

AN ACT

To authorize the incorporated village of Marshallville, in Wayne county, Ohio, to borrow money for the purchase of a fire engine and apparatus, the construction of cisterns, and purchase of a lot and the erection of an engine house.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the council of the incorporated village of Marshallville, in Wayne county, be and it is hereby authorized to borrow not to exceed one thousand five hundred dollars in the aggregate, to be applied only to the purchase of a fire engine and apparatus, the construction of cisterns, the purchase of a town lot, and the erection of an engine house, and for this purpose

to issue the bonds of said village, payable in not more than ten years, at the discretion of said council, and bearing interest at a rate not exceeding seven per cent. per annum, payable semi-annually, which bonds shall be signed by the mayor and countersigned by the clerk of said village: provided, that said bonds shall not be disposed of at less than their par value.

SEC. 2. That for the purpose of paying said bonds and the interest thereon as the same may become due, said council is hereby authorized to levy a tax upon all the taxable property within said village, from year to year, not exceeding in any one year three mills on a dollar over and above the levy now authorized by law, which shall be certified to the auditor of Wayne county, and collected as other taxes.

SEC. 3. This act shall take effect and be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed March 26, 1878.

[H. B. No. 262.]

AN ACT

Supplementary to an act entitled "an act to provide for the straightening, clearing out, widening, deepening, and otherwise improving certain ditches, drains, and water-courses in Wood county, Ohio," passed April 11, 1876. (O. L., vol. 63, page 303.)

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That the provisions of the above recited act shall be and the same are hereby extended to the following described ditches, drains, or water-courses, commencing at or near the quarter post on the east side of section thirty-three (33), town four (4), range ten (10), and thence running easterly along or near the half section line of sections thirty-four (34) and thirty-five (35), and following the general course of old ditch number sixty (60), straightening the same whenever it is found to be necessary; and thence running through sections thirty-six (36), twenty-five (25), and twenty-four (24) in said town and range, and through sections nineteen (19) and eighteen (18) of town four (4) of range eleven (11), to intersect ditch number two hundred and ninety (290) at the most available point, and there terminate; also a branch to the above described water-course, commencing at or near the south-east corner of the north half of the south-east quarter of section number thirty-three (33), in town three, range ten (10), and on the east side of the Miltonville pike, and thence running north along the east side of said pike, until it intersects ditch number two hundred and two (202), at or near the north-west corner of section fifteen (15), said town and range, and thence following the general direction of said ditch number 202 in a north-easterly direction through sections ten (10), three (3), and two (2), said town and range, and through section thirty-five (35) of town four (4), range ten (10), to intersect old ditch number sixty (60); also another arm to said ditch, commencing at the south-east corner of section fourteen (14), in town three (3), range ten (10), thence running north on the section line on the east side of said section fourteen (14), and sections eleven (11) and two (2), thence following the natural water-course through section thirty-

six (36), town four (4), range ten (10), until said water-course intersects old ditch number sixty (60); also, commencing near the west quarter post of section eighteen (18), town four (4), range ten (10), at the upper end of the old water-course, and thence running north on the west side of the road along the township line between Liberty and Milton townships and Plain and Weston townships, and, following the old water-course to Tontogany creek, in section thirty-one (31), town six (6), range ten (10), or until a sufficient fall or outlet is obtained; also, commencing about eighty (80) rods east of the center of section thirty-three, town five (5), range ten (10), and thence running in a westerly direction to the quarter section line of section thirty-two (32), thence northerly and westerly, following the channel of the old ditch or water-course (except where necessary to leave the old channel to prevent cutting diagonally through farm lands) to the town line ditch, or until a sufficient fall or outlet is obtained; also, an arm or branch to the same, commencing near the north line of section seven (7), town four (4), range ten (10), and thence running northerly in the channel of the old ditch to intersect the main line near the north-east corner of section thirty-one (31), town five (5), range ten (10), and there terminate; also, commencing at the half quarter post south of the south-east quarter of section twenty-eight (28), town five (5), range ten (10), thence running north one-half (½) mile in old ditch, thence west and north-westerly to the center of section number twenty (20), thence north in old ditch on half section line of sections twenty (20), seventeen (17), eight (8), and five (5), to where the creek turns east in south-east quarter of section five (5), straightening the same where necessary, and terminating about twenty-six (26) rods from the center of section five (5), same town and range also an arm, commencing near the west quarter post of section thirty-three (33) of same town and range, thence north in channel of old ditch between sections thirty-two (32) and thirty-three (33), twenty-eight (28) and twenty-nine (29), to near the north-east corner of section twenty-eight (28), thence north-easterly to intersect main line; also another arm, commencing at the north quarter post of section thirty-three (33), same town and range, thence west one-half (½) mile to intersect main line; also another arm, commencing at the center of section twenty-nine (29), thence north and north-easterly through sections twenty-nine (29) and twenty (20) of same town and range, to intersect the main line, and there terminating; also, for the construction of a ditch on the following described route: commencing in old ditch number twelve (12), in section number nine (9), town three (3), range nine (9), where the half section line running north and south crosses said ditch number twelve (12), running thence north on the half section line through said section nine (9) and section four (4), in said township, and through the center of sections thirty-three (33), twenty-eight (28), twenty-one (21), sixteen (16), nine (9), and four (4), in town four (4) of range nine (9), to a swale in the north part of said section four (4), thence following said swale or ditch in a north-westerly direction, about one and one-fourth miles to Beaver creek, intersecting the same at the most available point, thence down said Beaver creek until a sufficient fall and outlet is obtained; also, commencing near the south-east corner of section number thirty-three (33), town three (3), range nine (9), Wood county, Ohio, in the channel of ditch number one hundred and fifty-seven (157), thence following the general course of said ditch through sections thirty-three (33), thirty-four (34), twenty-seven (27), twenty-six (26), twenty-three (23), fourteen (14),

thirteen (13), and twelve (12), same town and range, and through sections seven (7), six (6), and five (5), town three (3), range ten (10), until it intersects improved ditch number two hundred and ninety (290), in section five (5), town three (3), range eleven (11), and there terminate; also, commencing at or near the south-west corner of section nineteen (19), town four (4), United States reserve, running thence north in the channel of ditch number one hundred and fifteen (115), to near the north-west corner of section eighteen (18) of same town, thence in a north-easterly course following the channel of ditch number seventy-two (72), into the Maumee river, the same being a water-course known as Grassy creek; also an arm to said water-course, commencing at or near the south-west corner of outlot number one hundred and sixty (160) in Perrysburg, and following the channel of ditch number eleven (11) until it intersects the main line; also an arm, commencing at or near the north-west corner of section seven (7), town five (5), range eleven (11), on the west side of the Findlay and Perrysburg road, thence north, following down the west side of said road until it intersects the main line; also a cut-off to said Grassy creek, commencing where the Findlay and Perrysburg road crosses said Grassy creek, and running on the most feasible route to intersect a water-course known as Crooked creek, thence down said Crooked creek until a sufficient fall and outlet is obtained.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed March 27, 1878.

[House Bill No. 286.]

AN ACT

Supplementary to an act entitled "an act to authorize the council of the incorporated village of Lebanon, Warren county, Ohio, to contract for the building of, and to build a public hall, corporation prison, and corporation offices, connected therewith, as provided by the resolutions and ordinances passed by the council of said village, and to execute, issue, and sell bonds, authorized to be executed, issued, and sold by an ordinance of said village, passed January 18, 1875, and to authorize said village to sell bonds for the construction of a gallery to said hall built in pursuance of the above named act, and to furnish said hall and departments therewith connected.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the council of the incorporated village of Lebanon, Warren county, Ohio, be and are hereby authorized and empowered to issue and sell, at par, at private sale, an additional amount of said bonds authorized to be issued by an ordinance of said village for building a public hall, etc., passed January 18th, 1875, not to exceed in amount six thousand dollars, the proceeds of which to be applied to the constructing of a gallery in said public hall, and furnishing said hall and the departments connected therewith, said bonds not to bear interest to exceed seven per cent. per annum, payable annually.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed March 28, 1878.

[House Bill No. 231.]

AN ACT

To create a special school district, composed of territory in the township of Falls and in county of Hocking.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the following described territory be and the same is hereby declared to be a special school district, to be known by the name of the Gore special school district; said district to be composed of the following villages and territory, to-wit: Hamblin, Burgessville and Gore, embracing sections twenty-seven and thirty-four, also east half of section twenty-eight, and east half and south-west quarter and south half of north-west quarter of section thirty-three, also west half, and west half south-east quarter, and south-west quarter, north-east quarter of section twenty-six, also west half and west half north-east quarter of section thirty-five, of township No. 14, range No. 16.

SEC. 2. It is hereby made the duty of the township clerk of the said township of Falls to duly notify the qualified electors of the proposed special school district, by written or printed notices posted in three of the most public places within the proposed district, at least five days before the second Monday in April, 1878, to meet on said day, at some suitable place therein, and vote upon the question of forming such district; those in favor thereof shall vote upon written or printed ballots the words —Special school district—Yes; those opposed—Special school district—No, at the same time and place, and under the same notice by the said township clerk, the electors residing in said territory shall at once proceed to elect three members of the board of education; one for the term of one year, one for two years, and one for three years, who shall hold their office for the term therein specified, from the 2d Monday of April succeeding their election, and until their successors are elected and qualified.

SEC. 3. That if a majority of the votes cast as provided in section 2 of this act be in favor of the formation of said special school district said special school district shall become the owner and possessor of all school property in the territory belonging thereto; and said special school district shall be governed and controlled in all respects by such laws as now are or may hereafter be in force relating to special school districts, but if a majority of the votes cast at said election be against the formation of said special school district, this act, and all proceedings provided herein, shall be null and void.

SEC. 4. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed March 28, 1878.

[House Bill No. 271.]

AN ACT

To create a special school district in Springfield township, Mahoning county.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That sub-school district No. 1, in Springfield township, Mahoning county, and bounded as follows: On the north, by section twenty-four, and land of A. J. Zieger and Gottlieb Dressel; on the east by state line of Ohio and Pennsylvania; on the south by county line; on the west by section thirty-five and twenty-six, comprising all of section thirty-six and section twenty-five, 32.80 acres, owned by A. J. Zieger, and 131.08 acres, owned by Gottlieb Dressel, be and the same is hereby created a special school district, entitled to all the rights and privileges, and subject to all the provisions of the laws now in force in this state, regulating special school districts, and shall be known as the Petersburgh special school district.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed March 28, 1878.

[House Bill No. 356.]

AN ACT

To provide for the issuing and payment of bonds by the commissioners of Stark county, to meet a deficiency in the levy for "county fund," in said county.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the commissioners of said county of Stark, for the purpose of meeting and providing for the aforesaid deficiency, be and they hereby are authorized to issue the bonds of said county, for an amount not exceeding, in the aggregate, twenty thousand dollars, payable at such times, not beyond three years from their date, as to them may seem proper, and bearing interest at a rate not exceeding seven per centum per annum.

SEC. 2. That for the purpose of providing for the payment of said bonds, said commissioners are hereby authorized to add, in the years 1878, 1879, and 1880, to the levy now allowed by the general laws of the state, for county purposes, not to exceed three-tenths of a mill, on each dollar of taxable property in said county.

SEC. 3. This act shall be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed March 28, 1878.

[House Bill No. 167.]

AN ACT

To transfer territory from Paris special school district to Paris township school district, Stark county, Ohio.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the hereinafter described territory be and the same is hereby transferred from Paris separate school district to Paris township school district, Stark county, Ohio, to wit:

Beginning at the north-east corner of lands of Herbert Stuckey, in the north-west quarter of section number four, and on the township line between Washington and Paris townships, in township number seventeen, range number six; thence running south along said Stuckey's east line, to the lands of Gottlieb Zigler, in the south-west quarter of section four, township seventeen, range six; thence west along said Zigler's north line to the road leading from Paris to Mount Union; thence south along said road to the lane running through the lands of John W. Greenwood, and being on the north boundary of said Greenwood's land; thence west along said lane to the road running from Paris to Louisville; thence west along said road to a line between the lands of said Greenwood and the lands of John Foltz; thence south along the line between said Foltz and Greenwood to the intersection of an alley running east and west to the south line of said Greenwood's lands; thence west along said alley to a line between the lot marked "B," section eight, township seventeen, range six, belonging to Catharine Freer; thence south along the west side of Catharine Freer's lot to an alley running east and west in Paris, and at the south-east corner of said Mrs. Freer's lot; thence west along said alley to an alley running south between the lands of William Shif and lot No. 39, belonging to Daniel Wraser; thence south along said alley to the road leading from Canton to Paris; thence south along an alley between lot No. 40 (belonging to William Biggam), in the town of Paris, and the lands of Daniel Miller, to the south end of said alley; thence in a line from the south end of said alley in Paris, between said Biggam and Miller, through the lands of Jacob Gerwig, in the east part of section eight, in a direct line to the turn in the road running from Paris to Minerva, and at a point between the lands of Jacob Gerwig and Daniel Miller; thence south with said road to the intersection of the north line of sub-district number six, Paris township, range six; thence along the north line of said district to the west line of said Paris township; thence north along the township line between Paris and Osnaburg townships, to the north line of Paris township; thence along said north line of Paris township to the place of beginning, at the north-east corner of said Stuckey's land.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed March 28, 1878.

[House Bill No. 142.]

AN ACT

To authorize the board of education of special school district No. 1 of Carroll and Erie townships, in the county of Ottawa, Ohio, to issue bonds to build a school-house, and purchase of site.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the board of education of said special school district No. 1 of Carroll and Erie townships, Ottawa county, Ohio, be and they are hereby authorized to issue the bonds of said special school district No. 1, bearing a rate of interest not to exceed seven per cent. (interest) per annum, and to dispose of the same at not less than their par value: provided, that there shall not be more than two thousand dollars of such bonds issued, and not for more than five years.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed March 28, 1878.

[House Bill No. 159.]

AN ACT

To authorize the creation of a special school district in Harrison township, Van Wert county, Ohio.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the territory comprised in sub-district number six (6), in Harrison township, Van Wert county, Ohio, and more particularly described as follows, to wit: Sections thirteen (13), fourteen (14), twenty-three (23), and twenty-four (24), in township two (2), south of range one (1) east, in said county, be and is hereby created and declared to be a special school district, to be known as Harrison special school district number one: provided, however, that a majority of the electors residing within said territory shall vote in favor of said special school district, at an election held in the manner following.

SEC. 2. That written or printed notices shall be posted in at least three of the most public places in said territory, signed by at least six resident electors of said territory, requesting the qualified electors thereof to assemble on a day and at an hour and place designated in said notice, then and there to vote for or against the creation of said special school district, which said notices shall be posted at least ten days before the day of said election. The electors assembled at the time and place designated in said notice, shall appoint a chairman and two clerks, who shall be judges of said election, which shall continue for at least three hours, and shall not close before four o'clock p. m. The electors in favor of said special school district, shall have written or printed upon their ballots, the words "Special school district—Yes," and those opposed thereto, the words "Special school district—No," and a majority of the ballots so cast shall determine the question, whether or not the said proposed special school district shall be created.

SEC. 3. Should a majority of the ballots so cast at said election be found to favor the special school district, as aforesaid, the directors then in office in said sub-district shall be members of the board of education of said special school district, each of said members to serve till the expiration of the time for which he was elected director aforesaid, and at each annual election after the passage of this act, there shall be elected one member of said board of education, who shall hold his office for three years, or until his successor is elected and qualified.

SEC. 4. That the said special school district shall be entitled to all the school property within said territory, and the title thereto is hereby vested in the board of education of said special school district; and the said special school district shall receive the same amount of school funds either now collected or now levied, to be collected within the current year as the said special school district would be entitled to if it had continued to exist as said sub-district.

SEC. 5. That so soon as said special school district shall be organized, it shall be the duty of the board of education thereof to certify to the auditor of said county, the fact and result of said election, together with a map or plat of said territory.

SEC. 6. That said special school district shall be governed by such laws as now are or hereafter may be in force relating to special school districts.

SEC. 7. That this act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed March 29, 1878.

[House Bill No. 311.]

AN ACT

To authorize the trustees of Olmsted township, in the county of Cuyahoga, to issue bonds to the amount of six thousand dollars, for the purpose of buying land, and to erect and repair suitable buildings thereon for infirmary purposes.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That for the purpose of buying land, and to erect and repair suitable buildings thereon, for the support and accommodation of the poor of the township of Olmsted, in the county of Cuyahoga, the trustees of said township be and are hereby authorized to issue and sell the bonds of said township, not exceeding six thousand dollars in amount, and of such denominations as said trustees may determine, not less than one hundred dollars nor more than one thousand dollars, each signed by the trustees of said township, payable at such time as the council may determine, not exceeding ten years after date, bearing a rate of interest not exceeding seven per cent. per annum, payable annually: provided, said b nds shall not be sold for less than their par value; and be it further provided, that the authority for the issuing of said bonds shall be submitted at some regular election to the voters of said township, and if a majority of the votes cast at said election shall be in favor of issuing bonds for such pur-

pose, then said trustees shall be authorized to issue the same, and not otherwise.

SEC. 2. For the purpose of paying said bonds so authorized to be issued by this act, said trustees of said township are hereby authorized and empowered to levy a tax upon all the taxable property of said township in addition to the amount already allowed by law, every year during the period said bonds have to run, sufficient in amount each year to redeem that portion of the bonds issued in pursuance of this act, that will fall due during said year, and all the accruing interest on said bonds, and the money so raised shall not be issued for any other purpose.

SEC. 3. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed March 29, 1878.

[House Bill No. 191.]

AN ACT

Authorizing the commissioners of Hamilton county to repair and to keep in repair the approaches to the union bridge.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the commissioners of Hamilton county be and they are hereby authorized to repair and to keep in repair the levee and approaches to the union bridge across the Little Miami river, near Linwood, in said county.

SEC. 2. The cost of making said repairs and maintaining said levee and approaches in good order shall be paid by said commissioners out of the bridge fund of said county.

SEC. 3. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed April 4, 1878.

[House Bill No. 287.]

AN ACT

Authorizing the council of the incorporated village of Edgerton, in Williams county, state of Ohio, to transfer certain funds.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the council of the said incorporated village of Edgerton, Williams county, Ohio, be and it is hereby authorized to permanently transfer from the foregoing funds as follows, to wit: from the street and sanitary fund to the corporation fund two hundred dollars, from the park fund to the corporation fund one hundred dollars, from the cemetery fund to the coporation fund one hundred and ninety-one dollars, from the building fund to the corporation fund one hundred dollars.

SEC. 2. This act to take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed April 4, 1878.

[House Bill No. 317.]

AN ACT

To relieve the incorporated village of McConnelsville.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the council of the incorporated village of McConnelsville, in the county of Morgan, Ohio, is hereby authorized and empowered to transfer to the public building fund of said village, and to use the same for the repair of its public hall lately damaged by fire, the following sums from the following different funds of said village, to wit: From the general and incidental fund, $150; from the police fund, $100; from the workhouse fund $150; from the fund for lighting the streets $150, and from the wharf fund, $200.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed April 4, 1878.

[House Bill No. 196.]

AN ACT

To change the surnames of persons therein named.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the surname of Ferdinand Hungerbuehler, Caroline Hungerbuehler, his wife and their children, Charles Ferdinand Hungerbuehler, Caroline Hungerbuehler, Jr., Ida Bertha Hungerbuehler, John Ferdinand Hungerbuehler, Sophia Hungerbuehler, Otto Hungerbuehler, and Alfred Hungerbuehler, all residents of Franklin county, Ohio, be so changed that their surnames will read as follows: Ferdinand Buehler, Caroline Buehler, Charles G. Buehler, Caroline Buehler, Jr., Ida B. Buehler, John F. Buehler, Sophia Buehler, Otto Buehler, and Alfred Buehler.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed April 4, 1878.

[House Bill No. 227.]

AN ACT

To authorize the city council of the city of Mansfield to issue bonds for water-works purposes.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the city council of the city of Mansfield is hereby authorized to issue the bonds of said city in a sum not exceeding twenty thousand dollars, and in denominations not exceeding five hundred dollars, at a rate of interest not exceeding seven per centum per annum, payable annually; and redeemable at a time or times fixed by said council, not exceeding twenty years from the date thereof for the purpose of so extending the water works of said city as to obtain therefor pure spring water, fit for domestic use. That said bonds shall be sold for par, and the proceeds thereof applied, under the direction of the board of trustees of said water works, to the extension aforesaid, but the whole cost thereof shall not exceed said sum of twenty thousand dollars, nor shall any floating indebtedness be increased by said extension.

SEC. 2. The council of the city of Mansfield shall, however, not have authority to issue said bonds until the question of extending said water works shall have been first submitted to the qualified electors of said city, and a majority of the voters voting upon said question at said election shall have approved of the same.

SEC. 3. That before taking a vote upon said question the council of the city of Mansfield shall cause to be published, for at least ten days before said election be held, in at least two of the newspapers published in said city, a notice of the time when and purpose of said election, and shall cause ballots to be furnished to the electors at said election on which shall be endorsed or printed the words "Extension of water works—Yes;" "Extension of water works—No," and if a majority of the ballots cast at said election, to be held and conducted in all respects in accordance with the provisions of the election laws of Ohio, shall be found endorsed in favor of said extension of the water works and issuing of bonds authorized by the first section of this act, then said city council shall be fully authorized to issue said bonds.

SEC. 4. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed April 4, 1878.

[House Bill No. 314.]

AN ACT

To authorize the trustees of Olmsted township, Cuyahoga county, Ohio, to join with the council of the incorporated village of Olmsted Falls, in the construction of a town hall for the joint use of said township and said village.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the trustees of the township of Olmstead, in Cuyahoga county, Ohio, and the council of the incorporated village of Olmsted Falls, be and they are

hereby authorized to join in the purchase of grounds for the construction of a town hall in the said village of Olmsted Falls, and in the erection of a town hall thereon, for the joint use of said township, village, and election precinct in which said village is situated, in such manner as said trustees and council shall agree and stipulate in regard to such joint occupancy.

SEC. 2. That such trustees and village council be and they are hereby authorized for the purpose of purchasing such grounds and building said town hall in said village, to issue bonds of said township, in sums not less than fifty nor more than five hundred dollars each, bearing six per cent. interest, payable semi-annually, which bonds shall be made payable in one, two, three, four, five, six, seven, and eight years from date, in equal semi-annual installments: provided, that said bonds shall not be disposed of for less than their par value, said bonds to be signed by the said trustees and the clerk of said township, and the said trustees shall, when it shall become necessary to levy a tax to pay said bonds and interest thereon, certify that fact with the exact amount required, to the auditor of said Cuyahoga county, and said auditor shall cause said sum so certified by said trustees, to be levied upon the taxable property of the election precinct in which said village is situated, and the same shall be collected like other taxes, and shall be applied to the payment of said bonds and interest: provided, that the total amount of said bonds so issued shall not exceed the sum of eight thousand five hundred dollars ($8,500): and, provided, further, that said trustees shall submit the question of building such town hall and levying said tax for the above named purpose, to the qualified electors of said election precinct at a general or special election, having first given at least thirty days' notice of the same, by publishing notice for two consecutive weeks in some paper published and of general circulation in the county of Cuyahoga, setting forth the time and place of such election, the question to be voted upon, and amount of bonds to be issued, and by posting up like notices in at least five of the most public places in said election precinct.

SEC. 3. The electors voting at said election shall have written or printed on their tickets, "Tax for town hall purposes—Yes," or "Tax for town hall purposes—No," and if a majority of all the electors voting at said election upon the question submitted shall vote "Tax—Yes," said town hall shall be built and tax levied as above provided.

SEC. 4. If the said trustees and village council shall enter into an agreement, as provided for by this act, the said agreement shall be reduced to writing, and shall show—

First—The amount of money put into or to be put into such grounds and hall by said trustees and said village council, shall be separately stated.

Second—The part or parts, room or rooms of such hall to be separately owned by such trustees and such village council, and whether to be occupied jointly or severally.

Third—As to the legal title of the land or lot on which such hall shall be constructed, and how, and in whom such legal title shall be held.

Fourth—Any other agreement in regard to the purchase of grounds, construction, management, custody, or control of such town hall, and such agreement shall be signed in duplicate by said trustees and village council, one copy of which shall be delivered to the trustees of said township, and one copy to the council of said village, and such written agreement shall be evidence of the respective interests and rights of said parties in and to such hall.

SEC. 5. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed April 6, 1878.

[House Bill No. 292.]

AN ACT

To authorize the commissioners of Scioto county, Ohio, to complete the turnpike road leading from Portsmouth past Catholic cemetery in said county, and to issue bonds therefor.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the county commissioners of Scioto county be and they are hereby authorized to complete the turnpike road leading from the city of Portsmouth through the Timmonds and Micklethwait lands to a point where said road intersects the road leading to the Catholic cemetery in Clay township, in said county, and for that purpose they are hereby empowered to issue the bonds of said county, not exceeding in amount the sum of fifteen hundred dollars: provided, the cost to said county for completing said road does not exceed the said sum.

SEC. 2. The said bonds may be in denomination of not less than one hundred dollars nor more than five hundred dollars, and payable, with interest not exceeding seven per cent. per annum, payable semi-annually, at such times as said commissioners shall deem for the best interest of said county; but the same shall not be sold for less than their par value.

SEC. 3. For the purpose of paying said bonds and the interest thereon as they become due, the said commissioners are hereby authorized and empowered to levy, annually, a tax on all the taxable property of said county, to be levied and collected as other taxes.

SEC. 4. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed April 6, 1878.

[House Bill No. 366.]

AN ACT

To divide "Little Muskingum Precinct," in Marietta township, Washington county, into two election precincts.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That "Little Muskingum precinct," in the township of Marietta, Washington county, be and the same is hereby divided into two election precincts, for all state, county and township purposes, one of which precincts shall be known as "Fultonburgh precinct," and shall consist of the following described territory, to-wit:

Bounded on the east by Duck creek, on the south by the Ohio River, on the west by the east corporation line of the city of Marietta, and on the north by Fearing and Muskingum townships.

SEC. 2. All that portion of "Little Muskingum precinct," in Marietta township not included in section one of this act, shall constitute the other election precinct, and shall be known as "Little Muskingum precinct."

SEC. 3. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed April 6, 1878.

[House Bill No. 377.]

AN ACT

To enable certain trustees of the First Regular Baptist church of Jackson, Jackson county, Ohio, to convey certain real estate.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the trustees of the First Regular Baptist church of Jackson, Jackson county, Ohio, be and they are authorized and empowered to convey certain real estate belonging to them in said town and county of Jackson, to wit: Out-lot number fifty-nine (59), in the south half of said town, as numbered and designated on the recorded plat of said town, to such purchaser, or purchasers, as the said trustees may deem advisable, and the proceeds of such sale to apply to the payment of the debts of said First Regular Baptist church, incurred in building its new church building in said town of Jackson. It being the intent and meaning of this act to authorize the sale and conveyance of the lot of land deeded by William W. Mather, and his wife Emily M. Mather, to the trustees of the First Regular Baptist church of Jackson, Jackson county, Ohio, January 28, A.D. 1846, for the use of said church.

SEC. 2. The purchaser of said real estate shall hold the same, when so conveyed in fee simple.

SEC. 3. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed April 6, 1878.

[House Bill No. 383.]

AN ACT

For the relief of Milo McCombs.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the trustees of the township of Howland, Trumbull county, are hereby

authorized to release the said Milo McCombs, and his sureties on his official bond as treasurer of said township, from the payment of the sum of ten hundred, thirty-eight dollars and sixty-three cents, less whatever sum may be paid as dividend on the same by Freeman & Hunt's assignee, and to enter said release on the minutes of said trustees: provided, that before said release shall be made, the question shall be submitted to the qualified electors of said township, at some general or special election, and if two-thirds of the electors voting at said election shall vote in favor thereof, and the trustees shall give public notice, at least ten days before the said election, that such release will be voted upon at said election.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed April 6, 1878.

[Senate substitute for House Bill No. 321.]

AN ACT

To authorize the council of the city of Cleveland to transfer funds.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That from and after the passage of this act, the common council of the city of Cleveland is hereby authorized to transfer any surplus moneys belonging to the market fund of said city to any other fund of said city, such transfer to be by ordinance passed for that purpose.

SEC. 2. This act shall be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed April 6, 1878.

[House Bill No. 182.]

AN ACT

To authorize the village of West Cleveland, Ohio, to issue bonds to the amount of six thousand dollars, for the purpose of paying for a culvert, built by said corporation, under the Lake Shore & Michigan Southern Railroad, at the intersection of Lake avenue.

WHEREAS, The general assembly of the state of Ohio, on the 28th day of February, 1877, passed an act to authorize the village of West Cleveland, Ohio, to issue bonds for the purpose of building a culvert under the Lake Shore & Michigan Southern Railroad; and,

WHEREAS, Said corporation has built said culvert, and the cost thereof is six thousand dollars more than the amount thought necessary, said discrepancy resulting from the fault of the engineer furnishing plans and specifications for the work; and,

WHEREAS, The contractors who built said culvert insist upon the payment of the amount due them, and said village has no funds wherewith to pay; therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That for the purpose of completing the payment for the building a culvert under the Lake Shore & Michigan Southern Railroad at its intersection with Lake avenue, the council of the village of West Cleveland, be and they are hereby authorized to issue and sell the bonds of said village, not exceeding six thousand dollars in amount, and of such denominations as said council may determine, not less than one hundred dollars nor more than one thousand dollars each, signed by the mayor and clerk of said village, payable at such times as the council may determine, not exceeding fifteen years after date, bearing a rate of interest not exceeding seven per cent. per annum, payable annually: provided, that said bonds shall not be sold at less than their par value.

SEC. 2. For the purpose of paying said bonds so authorized to be issued by this act, said council of said village are hereby authorized and empowered to levy a tax upon all the real estate of said village fronting or abutting on said Lake avenue, as may by the council be determined, in addition to the amount already allowed by law, every year during the period said bonds have to run, sufficient in amount each year to redeem that portion of the bonds issued in pursuance of this act, that will fall due during said year, and all the accruing interest on said bonds; and the money so raised shall not be used for any other purpose.

SEC. 3. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed April 8, 1878.

[House Bill No. 303.]

AN ACT

To authorize the city of South Toledo to issue bonds and borrow money for the completion of a certain road therein named.

WHEREAS, The amount of funds heretofore authorized to be raised for the completion of what is known as the "river road," is insufficient to complete the same, leaving a part thereof wholly unfinished; and

WHEREAS, The commissioners of Lucas county, Ohio, are about to regrade the continuation of "the state turnpike road," passing through said city of South Toledo, and intersecting said "river road;" thence leading to the city of Toledo over said "river road;" now, therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the city council of the city of South Toledo, Ohio, be and it is hereby authorized to issue bonds, not to exceed four thousand dollars, bearing a rate of interest not to exceed seven per cent. per annum, to be of such denominations as the said city council may determine, not less than one hundred dollars each; said bonds to be signed by the mayor and countersigned by the city clerk of said city, and payable at such time or times

as said council may direct, not exceeding four years, and not to be sold for less than their par value, the interest to be paid semi-annually, and the money arising from a sale of said bonds, to be applied to the completion of what is known as the "river road," running from the city of Toledo to said city of South Toledo, from the easterly line of said city of South Toledo to such point in said city of South Toledo as said council may determine; also of the said state turnpike road at its intersection with the aforesaid road, and at such points in said city of South Toledo as said council may direct, the same to be done in the same manner and style as the part of said "river road" heretofore completed. Said money to be applied to such purpose and none other.

SEC. 2. Said council shall have power, and it is hereby made its duty after the issuing of said bonds, during the running thereof, to levy on the taxable property of said city of South Toledo, sufficient tax to pay the interest semi-annually, and the principal of said bonds as they may become due, and certify to the auditor of said Lucas county, Ohio, the percentage so levied necessary for the payment thereof, and the said auditor shall place the same on the duplicate of taxes of said county, the same to be collected as other taxes, and the money so arising to be applied to the payment of said interest and principal of said bonds, and to no other purpose whatever.

SEC. 3. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed April 8, 1878.

[Senate Bill No. 112.]

AN ACT

To authorize the commissioners of Mahoning county to transfer funds therein named.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That the commissioners of Mahoning county be and they are hereby authorized to transfer the sum of thirty thousand dollars from the bridge fund of said county to the county fund thereof.

SEC. 2. That this act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed April 9, 1878.

[Senate Bill No. 145.]

AN ACT

To divide the township of Perry, county of Columbiana, into two election precincts, and to repeal a certain act therein named.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That the township of Perry, in the county of Columbiana, be divided into two precincts, for election purposes, as follows:

All that part of said township lying north of the road running east and west, and through the main street of the village of Salem, dividing said township at or near the center thereof, shall be known as the north precinct; and all the part of said township lying south of said road, street, and line, shall be known as the south precinct.

SEC. 2. In all elections for state, county, and township officers, it shall be the duty of the trustees and township clerk to serve as judges and clerk in the precinct in which they reside, and the other judges and clerks for each precinct shall be duly appointed as the law directs, by the trustees; but in case of failure so to do, the judges and clerks shall be chosen viva voce by the electors of such precinct, in such manner as is provided by law.

SEC. 3. The judges and clerks appointed by the trustees, or otherwise, shall be governed in their election returns, the charge of the ballot boxes, and the receiving of ballots, by the provisions of the election laws in force, and shall receive for their services the same compensation as is allowed judges and clerks of election by law.

SEC. 4. It shall be the duty of the township trustees to give lawful notice of all state, county, and township elections, in both precincts, and the places where the polls shall be opened.

SEC. 5. The act entitled an act to divide the township of Perry, county of Columbiana, into two election precincts (O. L., v. 74, p. 457), passed April 20, 1877, be repealed.

SEC. 6. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed April 9, 1878.

[House Bill No. 282.]

AN ACT

For the relief of Christian Kingseed.

WHEREAS, On the 19th day of October, 1877, the auditor of the state of Ohio sold to Christian Kingseed the following land in Shelby county, Ohio, viz:

Tract two, between lot No. 124 and Miami canal, in the corporation of Sidney, Shelby county, Ohio, containing 18-100 of an acre, at the price of one hundred and twenty-five dollars, and said Christian Kingseed has paid unto the state of Ohio thirty-one dollars and twenty-five cents, being one-fourth part of the purchase money; and,

WHEREAS, It appears of "record" that the auditor of state had no right to sell said land:

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That there be and hereby is appropriated out of any moneys not otherwise appropriated out of the sinking fund the sum of thirty-one dollars and twenty-five cents, with interest from the 19th day of October, 1877,

amounting to sixty-two cents, which is hereby directed to be refunded to said Christian Kingseed.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed April 9, 1878.

[House Bill No. 169.

AN ACT

For the relief of the sureties of Charles E. Spence, treasurer of Hamilton township, Warren county, Ohio.

WHEREAS, Charles E. Spence was, on the 2d day of April, 1877, duly elected treasurer of Hamilton township, Warren county, Ohio; and,

WHEREAS, On the 16th day of November, 1877, the said Charles E. Spence made an assignment of all his real and personal property to said sureties; and,

WHEREAS, It appears that there is a deficiency of about $4,200 of school and township funds, and that the assets in the hands of the assignees will not pay more than one-third of said amount; therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the trustees of Hamilton township, Warren county, Ohio, are hereby empowered and authorized to release the sureties of said Charles E. Spence from liability on their official bond of all over and above the amount realized on the assets in the hands of the assignees of said Charles E. Spence.

SEC. 2. Provided, that before such release shall be made, the question shall be submitted to the qualified electors of said township, at a regular election, after giving at least ten days' notice, by posting in ten of the most public places in said township, by printed or written notices.

SEC. 3. The ballots to be voted at said election shall have written or printed thereon the words, "For the release of the sureties of Charles E. Spence—Yes;" or "For the release of the sureties of Charles E. Spence—No;" and if three-fourths of the ballots cast at said election shall have written or printed thereon, "For the release of the sureties of Charles E. Spence—Yes," then the trustees shall release said sureties from further liability.

SEC. 4. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed April 9, 1878.

[House Bill No. 284.]

AN ACT

To authorize the trustees of the parsonage of the East Plainfield circuit, Methodist Episcopal Church, Coshocton county, to sell certain land.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the trustees of the parsonage of the East Plainfield circuit, of the M. E. Church, in Coshocton county, Ohio, are hereby authorized to sell and convey, in such manner and upon such terms as in their judgment shall best subserve the interests of said M. E. Church, on said East Plainfield circuit, a certain parcel of land, situate in Linton township, Coshocton county, Ohio, being about one and three-fourths ($1\frac{3}{4}$) acres, out of the north-east quarter of section ten (10), in township four (4), and range five (5), upon which was formerly erected a parsonage building, owned and occupied the M. E. Church, and to appropriate the proceeds of such sale to the use of said church.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed April 9, 1878.

[House Bill No. 39.]

AN ACT

For the relief of the sureties of Jas. A. Tipton, treasurer of Walnut township, Gallia county, Ohio.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the board of education of said Walnut township, Gallia county, Ohio, are hereby authorized to release said Henry W. Allison, H. W. Clise, J. W. Williams, and Samuel Drake from the payment of said two thousand three hundred and fifty-seven dollars and nineteen cents, and to enter said release upon the books of the said school board: provided, that before said release shall be made, the question shall be submitted to the qualified voters of said Walnut township, at the October election in the year 1878, said board of education having first given four weeks' notice of such election by publication in two newspapers published and of general circulation in said county of Gallia; and provided further, that two-thirds of said voters voting at said election shall vote in favor thereof.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed April 9, 1878.

[Senate Bill No. 151.]

AN ACT

To reinstate a sub-school district in Jackson township, Shelby county.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That sub-district number four, in Jackson township, Shelby county, comprising the following territory: East half of section eight, east half section seventeen, south-east quarter of section five, south half of section four, west half of section nine, north-east quarter of section nine, west half of south-east quarter of section nine, west half of section sixteen, west half of the north-east quarter of section sixteen, and the west half of south-east quarter of section sixteen, be and the same is hereby reinstated and made to constitute a sub-school district in said township, to be under the control of the board of education of said township, and to be governed by laws relating to such sub-school districts.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed April 9, 1878.

[House Bill No. 265.]

AN ACT

To divide Alliance precinct, in the township of Lexington and county of Stark, into two election precincts.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That Alliance precinct, in Lexington township, Stark county, be divided into two precincts, for election purposes, as follows:

All that part of said precinct lying north of the Pittsburgh, Fort Wayne and Chicago railroad, running east and west through the village of Alliance, dividing said precinct at or near the center thereof, shall be known as north Alliance precinct, and all that part of said precinct lying south of the Pittsburgh, Fort Wayne and Chicago railroad shall be known as the south Alliance precinct.

SEC. 2. In all elections for state, county, township and municipal officers, it shall be the duty of the trustees and township clerk to serve as judges and clerks in the precinct in which they reside, and the other judges and clerks for each precinct shall be duly appointed, as the law directs, by the trustees; but in case of failure so to do, the judges and clerks shall be chosen viva voce by the electors of such precinct, in such manner as is provided by law.

SEC. 3 The judges and clerks appointed by the trustees, or otherwise, shall be governed in their election returns, the charge of the ballot-boxes, and the receiving of ballots by the provisions of the election laws in force, and shall receive for their services the same compensation as is allowed judges and clerks of election by law.

SEC. 4. It shall be the duty of the township trustees to give lawful notice of all state, county, township and municipal elections, in both precincts, and the places where the polls shall be opened.

SEC. 5. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed April 10, 1878.

[House Bill No. 363.]

AN ACT

To authorize the trustees of Windsor township, Morgan county, to levy a tax to pay indebtedness.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the trustees of Windsor township, Morgan county, be and they are hereby authorized to levy a tax (in addition to the amount they are authorized to levy for other purposes), upon all the taxable property of said township, not to exceed three hundred dollars in amount, for the purpose of paying indebtedness of said township. The auditor is hereby required to place the levy so made upon the tax duplicate, and the treasurer shall collect the same as other taxes. The money so levied and collected shall be used only for the purpose mentioned in this act.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed April 10, 1878.

[House Bill No. 378.]

AN ACT

For the relief of John Martin.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the trustees of Mohican township, Ashland county, Ohio, are hereby authorized to release said John Martin and his sureties on his official bond from all liabilities for the payment of said sum so as aforesaid deposited with the Citizens' Saving bank of Ashland, Ohio: provided, that before said release shall be made, John Martin shall assign and transfer unto the trustees of said Mohican township his certificate of deposit, book account and entire claim held by him against said bank for said amount so deposited by him; and further, the trustees of said Mohican township are hereby authorized and required to submit the question of releasing the said John Martin from his liability on said bond to the qualified electors of said township, at any general or special election to be held in 1878, ten days' previous notice having been given of such submission by said trustees, by posting notices in three public places, in different portions of said township; and if two-thirds of the electors voting at said election shall vote in favor of releasing the said John Martin on his offi-

cial bond as treasurer of said township from payment of said sum, then the said John Martin and his sureties shall not hereafter be held liable to make up said money to said township.

SEC. 2. That the electors of said township voting at said election shall place on their ballots either the words "For release," or "Against release;" and if two-thirds of all the electors voting at said election shall vote "For release," then said John Martin and his sureties shall not be liable to make up said money to said township; and the trustees of said township are hereby authorized and required to levy and assess a tax on the taxable property of said township, not exceeding said sum, to be applied to the same special fund or funds, and for the same purpose that said funds were to have been applied.

SEC. 3. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate

Passed April 10, 1878.

[House Bill No. 304.]

AN ACT

To authorize the trustees of Delaware township, Delaware county, Ohio, to levy a tax for money to build a bridge.

WHEREAS, School District No. 6, of Delaware township, Delaware county, Ohio, is divided by the Olentangy river, and the school-house of said district is situated on the west side thereof, with no bridge or other means provided by which the scholars living on the east side can cross said stream to the school-house, except a small portion of the year, even then causing great risk of life and inconvenience, thereby preventing many of the scholars of said school district from enjoying the privileges of their common school; therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the trustees of said township be and are hereby authorized, for the purpose of building a foot-bridge across the Olentangy river in said township, and at or near the school-house of said district number six, to expend the sum of not exceeding one thousand dollars, out of the money collected as hereinafter provided for.

SEC. 2. For the purpose of raising said money, the trustees of said township are hereby authorized and empowered to levy a tax on all taxable property of said township, both real and personal, other than the real and personal property taxed in the Delaware school district of said township, at such times and in such amounts as may be necessary, in the years 1878 and 1879, and certify the same to the county auditor, by whom the same shall be entered upon the tax duplicate of said township, outside of Delaware school district, and be collected as other taxes, and the money so raised shall be paid over to the treasurer of said township, and be paid out by him on order of the township trustees certified by the township clerk: provided, that said tax shall not be levied until the same has been approved by a majority of the qualified voters of said

township (except the residents of Delaware school district) voting at any regular election at which the question shall be duly submitted.

SEC. 3. The act entitled an act to authorize the trustees of Delaware township, Delaware county, Ohio, to borrow money to assist in building a bridge, passed April 18, 1874, be and the same is hereby repealed.

SEC. 4. This act shall take effect and be in force from and after its passage.

JAMES A NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed April 12, 1878.

[House Bill No. 435.]

AN ACT

To authorize the board of education of Goshen township, Champaign county, to issue bonds to build a school-house.

WHEREAS, The board of education of Goshen township, in Champaign county, did, on the third Monday of April, 1877, direct a levy of a tax on the property in said township to raise the sum of eighteen hundred dollars for the purpose of building a school-house in sub-district No. 8, in said township, and for some cause the said levy was not placed on the grand duplicate for said year; and

WHEREAS, A school-house is needed for the purpose of education in said sub-district No. 8; therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the board of education of Goshen township school district of Champaign county is hereby authorized and empowered to issue the bonds of said township, to an amount not exceeding eighteen hundred dollars ($1800), payable at a period not exceeding eighteen months from the date thereof, and to bear interest at a rate not exceeding seven per centum per annum, for the purpose of purchasing a site and building thereon a school-house in sub-district No. 8 of said district.

SEC. 2. The said bonds shall be signed by the president and clerk of the said board of education, and shall not be sold for less than their par value; and for the purpose of paying these bonds when they become due, the said board of education shall cause a tax to be levied and collected on all the taxable property in said school district.

SEC. 3. This act shall take effect and be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed April 12, 1878.

[House Bill No. 402.]

AN ACT

To authorize the trustees of the Presbyterian church of New Concord, Muskingum county, Ohio, to convey to the Pleasant Hill cemetery association of Union township of said county, certain cemetery grounds owned by said church association.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That Ezra Lytle, John Halstead, and William C. Amspaker, trustees of the Presbyterian church of New Concord, Muskingum county, Ohio, and their successors, be and they are hereby authorized to convey to the Pleasant Hill cemetery association of Union township, Muskingum county, Ohio, the cemetery grounds belonging to said church, situate in said Union township Muskingum county, being about three acres of land, lying in the south-east quarter of section ten, township one, range five.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed April 16, 1878.

[House Bill No. 300.]

AN ACT

To authorize a contract with reference to a new school house.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the board of education of Franklin township, in Franklin county, be and they are hereby authorized to contract with Franklin Grange No. 632, that in the erection of a new school house in sub-district No. 5, in said township, to have a second story put on said school house to be finished and used as a Grange hall: provided, that the expense of said additional story shall be borne by said Franklin Grange No. 632, and that whenever said additional story is needed for school purposes, the same will be surrendered to the board, proper compensation being made therefor, taking into account its cost and the value of the use thereof in the meantime.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed April 16, 1878.

[House Bill No. 181.]

AN ACT

To provide for the location, establishment, and construction of a new ditch, in part, and the alteration, changing, widening, deepening, and otherwise improving certain ditches, drains, and water-courses, in the counties of Sandusky, Seneca, and Wood, in the State of Ohio.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the county commissioners of the counties of Sandusky, Seneca, and Wood,

shall have the power, as hereinafter provided, if in their opinion the same is demanded by or will be conducive to the public health, convenience, and welfare, or is necessary for the drainage of any roads, railroads, or lands in said counties, to cause to be located, established, cleaned out, widened, deepened, straightened, extended, or otherwise improved, the following ditches, drains, and water-courses, to wit:

Commencing on the east side of the railroad-bed known as the Pomeroy railroad, and near the south line of section eleven (11), in township number three (3), range number twelve (12), in Wood county, and running thence in a north-easterly course on and along the old ditch, drain, or water-course, through sections eleven (11) and one (1), in said county of Wood, a distance of two miles and two thousand two hundred and twenty feet; thence north on and along the west side of the county road between Wood and Seneca counties one thousand three hundred feet, to near the north-west corner of Seneca county; thence east on and along the south line of the county line road between Sandusky and Seneca counties, and in and along the old county line ditch, for a distance of two miles and three thousand eight hundred and sixty feet, to a point on the lands of Elias Hollenbaugh, in section four (4), Jackson township, Seneca county thence in a north-easterly direction through sections thirty-three (33), thirty four (34), thirty-five (35), twenty-six (26), twenty-five (25), and twenty-four (24), in Scott township, Sandusky county; thence on and along or near the old ditch, drain, or water course, through sections nineteen (19), eighteen (18), and seventeen (17), in Jackson township, Sandusky county, to a point near the dwelling-house of Peter Miller, in said section seventeen (17); thence on or near the line of said ditch or water-course, as far within said Jackson township as may be necessary to make a proper and sufficient outlet.

SEC. 2 That it shall be the duty of the commissioners of said counties of Sandusky, Seneca, and Wood, to meet in joint session, as soon after the passage of this act as practicable, at such time and place as they shall agree upon, and in all joint sessions of said boards of commissioners, two members from each county shall be necessary for a quorum and for the transaction of business; and the county auditor of the county in which the largest portion of said improvement is situated, shall act as clerk of the board, and shall make out and forward to the auditors of the other counties, a duplicate of the record of the proceedings of all joint sessions of the commissioners of said counties; and when so met in joint session, they shall proceed under the petition of Michael Stahl, Paul Kline, and others, to the commissioners of said counties, filed in the offices of the auditors of Sandusky, Seneca, and Wood counties, for said improvement, and which petition is still pending, and adopt so much as they may deem proper of the survey and report made by order of said commissioners, under said petition, by Dennis Maloy, county surveyor of Seneca county, which report and survey was filed in the office of the auditor of Sandusky county, October 12, 1876, and also in the offices of the auditors of Wood and Seneca counties: provided, that in case the bond or bonds heretofore under former proceedings filed shall be considered by the joint board of commissioners insufficient to secure the payment of all the cost and expenses made under said proceedings, or made by reason of this act, the said joint board may, and it is hereby made its duty to require such additional bond or bonds as will secure the payment of all such costs and expenses, and said commissioners shall appoint an engineer to make a survey of the route of said improvement, or so much thereof as said com-

missioners may deem necessary, and also of such alteration or extension of the same as they may direct; and said engineer shall thereupon take to his aid the necessary assistance, and shall proceed to make all necessary surveys and levels of the route of said improvement, and shall return to each of the auditors of said counties, a plat and profile of said proposed improvement, together with a complete report of the survey and levels thereof, which shall set forth a definite description of the proposed improvement, its availability and necessity, with a description of the lots, lands, roads, and railroads that will be benefited by said improvement, how they will be affected thereby, and the estimated expense of said improvement for each one thousand feet of the same, the depth of excavation of said ditch, drain, or water-course, at least every one hundred feet, and fix a grade line. The profile of the engineer shall show the number of each station, and the length thereof, numbered progressively down stream. The plat of the engineer shall show the route of the ditch, and the lots, lands, roads, and railroads that will be benefited by the construction of said ditch, drain, and water-course. The report of the engineer shall specify the manner in which the work should be done, the number of cubic yards of earth and rock to be removed from each section, and the necessary flood-gates, water-ways, bridges, and farm crossings to be made, together with such other facts and suggestions as he may deem material. Immediately after the filing of the report of the engineer, the commissioners of said counties shall agree upon a time and place for hearing said report and petition, and it shall be the duty of the county auditor of each of said counties respectively to cause notice to be given of the filing of said petition and report, and the pendency, substance, and prayer of said petition, and the time and place set for the hearing thereof by said joint board of commissioners, at which time they will establish the same, to be given by publication for two consecutive weeks, in some newspaper published and of general circulation in his county, and said notice shall be deemed sufficient to all non-resident land-owners interested; and a like notice shall be served on all resident land owners, railroad companies, etc., at least ten days prior to the day set for hearing, by one of the petitioners, who shall make a return on the original notice, under oath, of the manner and time said notice was served.

SEC. 3. That any person or persons claiming compensation for lands or property appropriated, or who shall sustain any damage by said proposed improvement, shall make his, her, or their application in writing therefor to the said commissioners, describing the property upon which damages or compensation is claimed, and file the same with the auditor of said county where the land is situated, on or before the day set for hearing said petition, and on failing to make such application, shall be deemed and held to have waived his, her, or their right to such compensation and damages.

SEC. 4. That upon the hearing of the petition and report of the engineer as mentioned in section two of this act, the said joint board of commissioners shall, if in their opinion, the public health, convenience and welfare, and the drainage of roads, railroads and lands demand it, make an order that said improvement be made, the width and extent of the same, and the lands which shall be assessed for the expense of the same, and they shall thereupon appoint a competent engineer to superintend the performance and completion of said work, who shall give notice, for at least two consecutive weeks, of the time and place, when and where, he will let contracts for the performance of the same, which notice shall

he given by publication in some newspaper, in each of said counties, published and of general circulation in said counties, respectively, and by posting one notice upon the door of the auditor's office in each of said counties, and not less than ten such notices in public places in the vicinity of said ditch improvement, for at least ten days before said time, and who shall, with the approval of said commissioners, when in joint session, make a contract or contracts for the completion of said work, and the contractor or contractors may at once enter upon the performance of the same under the superintendence of the engineer so appointed as aforesaid: provided, that said improvement shall be let in sections of not less than one thousand feet, and to the lowest and best bidder or bidders, who shall give bond, payable to the state of Ohio, with such reasonable security for the proper performance of his or their contract within the time and manner prescribed, as the joint board of commissioners of said counties may deem sufficient.

SEC. 5. That the commissioners of said counties, when said improvement shall have been ordered by them, shall immediately, upon actual view of the premises along the route of said ditch improvement, apportion the expense of said improvement, including the costs and compensation of lands appropriated, and damages sustained, and all other expenses of the location and establishment of said ditch improvement, upon the real property embraced in the order aforesaid, according to the benefits to be derived therefrom; when the apportionment shall have been made, the county auditors of said counties shall give notice of the same by publication, in tabular form, in some newspaper published, and of general circulation in their respective counties, for two consecutive weeks, and of the time and place, when and where the county commissioners of said counties will meet, in joint session, to hear exceptions to the same, which notice shall be deemed sufficient for all non-residents interested, and a like notice to all resident land-owners, railroad companies, etc., served as provided in section two of this act. On the day mentioned in said notice, the said commissioners shall meet, and if no exceptions have been filed to said appointment [apportionment], they shall confirm the same; but if exceptions in writing have been filed by any of the owners of lands affected thereby, they shall first proceed to hear such exceptions, and for that purpose shall proceed to hear any testimony that shall be offered by any party interested, and either one of said commissioners shall be authorized to administer oaths to witnesses, and on such hearing they may either confirm said appointment [apportionment] or charge [change] the same, and the final action of said joint board of commissioners shall be entered upon the records in each of said counties, and shall show how the said expense has been apportioned upon the lands ordered to be assessed as aforesaid. The said joint board of commissioners shall have full authority to determine the manner in which the assessments shall be made; the amount of the expense of the preliminary surveys, costs of location and establishment, and costs of construction, which each county shall pay. The county auditor of each of said counties shall assess in such installments the amount of said apportionment to the several tracts of land, town lots, highways, roads, or railroads within their respective counties to which the same has been apportioned as aforesaid by said joint board of commissioners, and place the same upon the tax duplicate in each county, and said assessment shall be collected as taxes are now by law collected: provided, that all the costs and expenses of the preliminary survey, proceedings, and apportionment of said improvement shall be paid out of

the county treasuries as shall be authorized by said joint board of commissioners.

SEC. 6. That for the purpose of raising the money necessary to meet the expense of said improvement, the commissioners of each of said counties are hereby authorized to issue the bonds of their county, in amounts as may be determined by said joint board, payable in installments, or at intervals, not exceeding in all the period of ten years, bearing interest at a rate not exceeding seven per centum, per annum, payable annually, which bonds shall not be sold for less than their par value; and the assessments shall be divided in such manner as to meet the payment of principal and interest of said bonds, and so be placed upon the tax duplicate against the lands assessed, and collected in the same manner as other taxes are collected, and when collected, the money arising therefrom shall be applied to no other purpose than the payment of said bonds and interest: provided, no bonds shall be delivered or money paid to any contractor except upon estimate of work done, as the same progresses, or is completed, which estimate shall be made by the engineer of said improvement, and approved by one or more of said county commissioners, as said joint board may direct; and provided further, that the money paid out of either of said county treasuries by authority of this act, shall be reimbursed to said county treasuries out of the first collections from the first levy of the taxes authorized by this act.

SEC. 7. That for the purpose of keeping said ditch, drain or water-course free from drift-wood, brush, or any other obstructions that may impede the free passage of water through the same, the said joint board of county commissioners shall be authorized to "assess" from time to time, such amount of tax on the lands so benefited and assessed as aforesaid for said improvement as in their judgment may be deemed sufficient to keep such water-course in good repair; and said amount so "assessed" shall be applied to the removing of such drift-wood or other obstructions, under and by direction of said commissioners, in such manner as they may deem best, provided that the said assessment shall be in exact proportion to the original apportionment and assessment made to lands, town lots, roads, railroads, townships and counties, and they shall enter an order upon their journal, specifying the amount to be "assessed" for that purpose, and the portion or portions of said ditch, drain or water-course to be freed, and the same shall be collected and applied according to the provisions of this act.

SEC. 8. That the fees of the county auditors, treasurers, commissioners, and probate judges, shall be the same as provided by law for like services in other cases, and shall be paid out of the general fund, and not again reimbursed, the surveyor and engineer shall be allowed five dollars per day for the time actually employed; each chainman, axman, and rodman shall receive one dollar and twenty-five cents per day; the printer's fees for publishing the notices herein provided for shall be at the rate of fifty cents per square for actual printed matter for the first insertion and twenty-five cents per square for each insertion thereafter and no more, all cost bills shall be examined and approved by the said joint board before any order shall issue thereon.

SEC. 9. That the said joint board of commissioners may when such improvement is located and established as provided in this act, and the same crosses any corporate or public road, or any railroad, if they are of the opinion that the same will be benefited, and the road-bed or traveled track will be made better by said improvement of said ditch, drain or

water course, apportion and set off to the county, if a county or state road, or to the township, if a township road, to the company, if a corporate or railroad, a part of the cost of constructing said improvement the same as to private individuals, according to the provisions of this act, and compel them to pay said cost of construction in like manner.

SEC. 10. That if application for compensation and damages shall have been made agreeably to the third section of this act, the joint board of commissioners shall fix a day on which they will meet and determine upon actual view of the premises, the amount of compensation and damages to be allowed to such applicants, and also a day when they will make their report thereof. After the report of said commissioner shall have been made, the petitioners may discontinue the said proceedings by paying all costs that have accrued up to that time, and notifying each of said county auditors in writing that they will not further prosecute the same, but no proceedings shall be discontinued unless the notice thereof shall be signed by a majority of the petitioners for said improvement.

SEC. 11. That if any person, persons or corporation shall feel aggrieved by the action of said joint board of commissioners, in the assessment of damages or compensation, either or both, he, she or they may within fifteen days from the making of said report appeal from the decision of the joint board of commissioners to the probate court of the county in which said land is situated, by giving an undertaking with good and sufficient sureties, to be approved by the auditor of said county, conditioned to pay all costs on such appeal; if the appellants shall fail to sustain their appeal against the decision of said joint board of commissioners, and such undertaking having been given, the auditor shall forthwith certify to the probate court a copy of said appeal together with a description of the property taken or injured, as contained in the report of said joint board of commissioners, which shall be docketed in said court, styling the appellant, plaintiff, and the joint board of commissioners, defendants.

SEC. 12. That if the appeal be taken on account of damages or compensation allowed by said commissioners, such proceedings shall be had to determine the amount, as are required by the act entitled "An act to provide for compensation and damages to owners of private property appropriated to the use of corporations," passed April 23, 1872, and the acts amendatory thereof and supplementary thereto, and the compensation or damages found in favor of said claimant, shall be certified by said probate judge to the county auditor, and paid out of the county treasury from the general fund.

SEC. 13. That if said joint ditch improvement shall at any point intersect or cross, or run within the boundaries of any state, county, township, or improved road, in either of said counties, or on the line between said counties, or at any place where a public road by said joint board of commissioners is deemed necessary, in every such case the timber of all kinds, within the boundary of said road, shall be cleared out, and said ditch improvement shall be constructed so that the excavated earth shall be so placed as to make a good road bed for public travel.

SEC. 14. That all acts and parts of acts, and provisions of law now in force, relating to the construction, cleaning out, widening, deepening, or otherwise improving any ditch, drain, or water-course, that are inconsistent, or in any way conflict with the provisions of this act, shall be held to be inoperative and of non-effect in any proceedings had by and

under the provisions of this act; but in all matters not provided for in this act, said joint board of county commissioners shall be governed by the general laws in force relating to the construction, locating and establishing, cleaning out, widening, deepening, or otherwise improving ditches, drains, and water-courses, as they may be applicable to their proceedings.

SEC. 15. That the collection of taxes levied, or ordered to be levied, to pay for the location, establishment, and construction of said improvement, under and by authority of this act, shall not be perpetually enjoined and declared absolutely void in consequence of any error committed by the engineer or surveyor, or by the county auditor of either of said counties, or by said joint board of county commissioners, in the location and establishment thereof, nor by reason of any error or informality appearing in the record of the proceedings by which said improvement may have been located and established. But the court in which any proceedings may hereafter be brought to reverse and declare void the proceedings by which said improvement has been located or established, or to enjoin the tax levied, or to be levied, to pay for the labor and fees aforesaid, shall, if there be manifest error in said proceedings, set the same aside, and allow the plaintiff in the action to come in and show wherein he has been injured thereby. The court shall, upon the application of either party, appoint such person or persons to examine the premises, or survey the same, or both, as may be deemed necessary; and the court shall, on final hearing, make such order in the premises as shall be just and equitable, and may order such tax to remain on the duplicate for collection, or order the same to be levied, or may perpetually enjoin the same, or any part thereof, or if the same shall have been paid under protest, shall order the whole or any such part thereof as may be deemed just and equitable, to be refunded. The costs of such proceedings to be apportioned among the parties, or paid out of the county treasury, as justice may require.

SEC. 16. This act shall take effect and be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed April 16, 1878.

[House Bill No. 434.]

AN ACT

To authorize the board of education of Chardon school district number one, in the county of Geauga, to issue bonds, to cancel certain outstanding bonds, refund a school house debt, and provide for payment of the same.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That the board of education of the incorporated village of Chardon, and the territory annexed for school purposes, in the county of Geauga, be and hereby is authorized and empowered to issue bonds, not exceeding the sum of seventeen thousand dollars, the principal and interest payable at such time, not exceeding ten years, upon such rate of interest not exceeding seven per cent., and in such proportion of amounts as the said board of education shall stipulate, bonds to be signed by the president and secretary of said board of education.

SEC. 2. For the payment of bonds issued under the provisions of this act as they shall become due, with the interest thereon, said board of education is hereby authorized to levy a tax, in addition to other levies for school purposes, on all taxable property in said incorporated village and territory annexed for school purposes, sufficient to pay said bonds and interest, said levies to be from time to time certified by said board of education to the county auditor, by whom the same shall be entered and assessed upon the tax duplicate and record of said county, and collected as other taxes: provided, that the levy in any one year shall not exceed one-fifth of said sum of seventeen thousand dollars and accrued interest thereon. The bonds herein provided for shall not be disposed of for less than their par value, and may be sold or exchanged for original bonds issued by said board of education for the construction of a school house in said incorporated village, and all money received from the sale of bonds herein provided for shall be used only for the cancellation of said original bonds.

SEC. 3. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed April 16, 1878.

[Senate Bill No. 103.]

AN ACT

To authorize the council of the village of Ashtabula, Ashtabula county, Ohio, to levy a tax, issue bonds, and raise funds for the improvement of Ashtabula harbor in said village.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the council of the village of Ashtabula, in the county of Ashtabula, and state of Ohio, be and they are hereby authorized and empowered to raise money in the manner hereinafter provided, not to exceed in amount the sum of fifteen thousand dollars, for the purpose of widening, straightening, deepening, and improving Ashtabula harbor, in said village.

SEC. 2. That for the purpose aforesaid, said council are hereby authorized to issue bonds, in anticipation of the collection of the annual levies provided for in this act; said bonds to be signed by the mayor of said village, countersigned by the clerk thereof, and sealed with the seals of both said mayor and said clerk, and shall be dated on the day of the issue thereof. The face of said bonds shall be for such sums, and payable at such times, within ten years after the issuing thereof, as said council shall direct, and bear interest at rate not exceeding seven per cent. per annum, with interest payable annually, which bonds shall be sold, but not for less than the par value thereof; and said bonds shall be so issued that not more than three thousand dollars thereof shall fall due in any one year.

SEC. 3. That said council be and they are hereby authorized and empowered to levy a tax, annually, on all the taxable property, both real and personal, in said village, sufficient to pay said bonds, together with the interest accruing thereon, as the same shall become due, and said

council shall cause said levies to be annually certified to the auditor of said Ashtabula county, to be collected in the same manner as other village taxes, and to be expended under the direction of said council, for the purpose for which it was levied, and for no other.

SEC. 4. That the bonds mentioned in this act shall not be issued, nor shall any tax be levied hereunder until the question of the propriety thereof shall have been submitted to the electors of said village at a general election, or a special election called for that purpose, and three-fifths of all the electors voting at such election shall have voted in favor thereof, which said election shall be held and returns made as other village elections: provided, however, the following special directions shall be observed, viz.:

That said council shall give ten days' notice of the time and place of holding said election, by the publication of the same in all of the newspapers published in said village, which said notice shall state the object for which said tax is to be levied, and said bonds are to be issued, and the amount thereof, which election shall be by ballot, and all the ballots in favor of levying said tax and issuing bonds for the purpose aforesaid, shall have written or printed thereon, "Levy a tax and issue bonds for harbor improvements—Yes," and all those against the same shall have written or printed thereon, "Levy a tax and issue bonds for harbor improvements—No."

SEC. 5. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed April 17, 1878.

[Senate Bill No. 109.]

AN ACT

To authorize the Clough creek turnpike company to take possession of a county dirt road, and to extend its road from the east line of Hamilton county to the Mt. Carmel and Nine Mile turnpike, in Clermont county.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the Clough creek turnpike company be and it is hereby authorized and empowered to enter upon and take possession of a county dirt road leading from the east line of Hamilton county, at the eastern terminus of said Clough creek turnpike, and connecting with the said Mt. Carmel and Nine Mile turnpike, and to grade and macadamize said dirt road; and that thereafter said road thus improved shall form a part of said Clough creek turnpike road, and the company owning said road shall have all the rights and privileges thereon of toll roads, and be subject to all the liabilities and restrictions now imposed by law.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed April 17, 1878.

[Senate Bill No. 129.]

AN ACT

To authorize the council of the village of Coshocton to transfer certain funds mentioned therein.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the village council of the said village of Coshocton, Ohio, be and they are hereby authorized to transfer the sewer fund now on hand in the treasury of said village, and to be collected therein during the year 1878, the same being now levied, and being surplus funds, and not required in said village, to the following funds: Light, building, and fire department funds of said village; and the said council are hereby authorized to apportion the amounts to the credit of each of the last named funds, as the best interests of said village may require.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed April 17, 1878.

[Senate Bill No. 124.]

AN ACT

To authorize the commissioners of Brown county, Ohio, to construct a free turnpike road from the terminus of the Ripley and Hillsborough free turnpike road to the Highland county line; and to construct a free turnpike road from the terminus of the Arnheim free turnpike road via Sardinia to the Highland county line; also from the terminus of the Mt. Orab and Burton free turnpike road via Greenbush to the terminus of the Fayetteville and Chasetown free turnpike road.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the county commissioners of Brown county, Ohio, be and they are hereby authorized to construct a free turnpike road from the terminus of the Ripley and Hillsborough free turnpike road, via South Fincastle and Fincastle, and construct a free turnpike road from the terminus of the Arnheim free turnpike road, via Sardinia, and on the line of the old road as near as may be practicable to the Highland county line; also from the terminus of the Mt. Orab and Benton free turnpike road, via Greenbush, to the terminus of the Fayetteville and Chasetown free turnpike road.

SEC. 2. That said county commissioners may, if they deem it best, issue bonds for the construction of said roads: provided, said bonds shall bear interest at the rate of six per centum per annum, payable semi-annually, and shall not be sold for less than their par value: provided, further, that not over twenty per centum of the cost of said improvements shall be assessed in any one year: provided, that said commissioners shall, before proceeding to construct said roads, require and secure from those interested in said improvements a subscription or donation equal in amount to twenty per centum of the cost of said improvements to aid in the construction of the same.

SEC. 3. That for the purpose of paying said bonds the county commissioners of said county are hereby authorized to levy and assess a tax not exceeding one mill on the dollar, annually, on any and all property in said county, excepting such lands as have heretofore been assessed for the construction of any free turnpike or improved road or roads already con-

structed, or in course of construction, at the time the levy of tax aforesaid, unless the amount that would be ratably levied upon the said lands shall exceed the amount of such assessment, and in such case such excess only shall be levied and collected.

SEC. 4. That a majority of said board of commissioners shall, at a regular session, be necessary to agree upon specifications and order said improvements.

SEC. 5. This act to take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed April 17, 1878.

[House Bill No. 208.]

AN ACT

To authorize the board of county commissioners of Franklin county to construct bridges across the Scioto river at points therein named.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the board of county commissioners of Franklin county be, and they are hereby authorized to construct two bridges across the Scioto river, at such points as they may designate within the corporate limits of the city of Columbus: provided, that one of said bridges shall be built at some point on said river north of the National road, and the other at some point on said river south of said road.

SEC. 2. That for the purpose of constructing and paying for said bridges, it shall be the duty of said board of county commissioners, with the consent of the city council of said city, to set apart, after each semi-annual settlement of the county auditor and treasurer, by an order entered upon their journal to that effect, so much of the bridge tax as shall be annually levied by said board for bridge purposes, and collected upon the taxable property within the corporate limits of said city of Columbus, until a sufficient amount shall accumulate in the treasury to accomplish the purposes named in the first section of this act: provided, that the general levy for bridge purposes shall not be increased on account of anything herein contained.

SEC. 3. That so soon as a sufficient amount shall be realized from said bridge levy as aforesaid provided, to enable the said board of county commissioners to proceed to the construction of one or both of said bridges, at such a cost as they may deem proper, said board shall cause suitable plans and specifications to be made therefor, and shall be governed in all their subsequent proceedings as to the letting of contracts for the building of said bridges, or either of them, as is now provided by law.

SEC. 4. This act shall take effect and be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed April 17, 1878.

[House Bill No. 338.]

AN ACT

To authorize the "Berea agricultural society" to open streets through, to allot and sell or exchange certain lands.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the Berea agricultural society be and is hereby authorized to open streets through, allot, sell or exchange any real estate belonging to said society not now used for the purposes of such society.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed April 17, 1878.

[House Bill No. 355.]

AN ACT

To authorize the auditor of Butler county to pay a claim named therein.

WHEREAS, J. W. Owens, of Reily township, Butler county, Ohio, represents that he performed work and labor on the Baltimore and McGonigle station free turnpike road to the amount of one hundred and eighty-five dollars, over and above the taxes levied and collected for the construction of said road.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the auditor and county commissioners of Butler county, Ohio, be and they are hereby authorized to inquire into the facts of said claim, with power to hear testimony thereon, and ascertain the amount of labor so performed by said J. W. Owens, which he has not been paid for, and if on said examination said auditor and county commissioners are satisfied that said claim, or any part thereof, is just, with interest thereon, the county auditor is authorized to draw an order on the treasurer of said Butler county in favor of said J. W. Owens for the amount so found due him.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed April 17, 1878.

[Senate Bill No. 125.]

AN ACT

To authorize the council of the incorporated village of Norwalk to levy an additional tax for the general purpose fund of said village.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the council of the incorporated village of Norwalk, Ohio, in order to provide for the deficiency now existing in the general purpose fund of said

village, be and is hereby authorized and empowered to levy a tax of one and one-half (1½) mills for said fund, upon the real and personal property of said village, in addition to the tax for said fund now authorized by law; and that said council be and is hereby authorized and empowered to make such additional levy for said fund for the period of three (3) years, including the next general levy: provided, that the aggregate of such general levy in said village shall at no time exceed the sum of eight (8) mills now authorized by law.

SEC. 2. This act shall take effect from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed April 24, 1878.

[Senate Bill No. 132.]

AN ACT

To authorize the commissioners of Belmont county to levy a special tax for purposes therein named.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, Tha the commissioners of Belmont county be and they are hereby authorized to levy a tax for the relief of the poor in said county, in addition to the amount now authorized by law to be levied, not exceeding four-tenths o a mill on each dollar of taxable property within said county.

SEC. 2. This act to take effect and be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed April 24, 1878.

[House Bill No. 329.]

AN ACT

To authorize the commissioners of Adams county to construct a free turnpike road from the terminus of the Russellville and Winchester free turnpike road, at the Brown county line, to the village of Winchester, in said county of Adams.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the commissioners of Adams county be and they are hereby authorized to construct a free turnpike road from the terminus of the Russellville and Winchester free turnpike road, at the Brown county line, to the village of Winchester, in Adams county.

SEC. 2. Said road shall be constructed on the shortest and most practical route, and shall be opened not more than sixty feet wide, nor less than forty feet, and at least twenty feet in width shall be turnpiked with earth so as to drain freely to the sides, and raised with stone or gravel, or both, not less than twelve nor more than sixteen feet in width, nor less than twelve inches thick in the center, and not less than eight

inches thick at the outer edge of such bed of stone or gravel, well compact together in such a manner as to secure a firm, even, and substantial road; and said road shall be provided with the necessary side drains, and with substantial bridges or culverts at all the crossings.

SEC. 3. Before determining upon the location and construction of said road, said commissioners shall require donations of money, not exceeding twenty-five per centum of the estimated cost of said road, together with the right of way; persons contributing to said donation shall sign a written agreement, subjecting their taxable property to taxation until such donations as they may make are paid, which agreement shall be filed and recorded in the office of the county recorder, and from the time of such filing and recording, shall operate as a lien upon the real estate of the several parties joining therein as donors for the purpose herein provided.

SEC. 4. Said commissioners may, if they deem best, assess a tax upon the taxable property of said county, to pay for the construction of said road out of funds lying in the county treasury and unexpended, levied or road improvement purposes.

SEC. 5. A majority of said board of commissioners shall, at a regular session, be necessary to agree upon specifications, and order said improvement.

SEC. 6. The locating, viewing, selling, and advertising of said road shall be done in accordance with statutes now made and provided, governing such matters.

SEC. 7. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed April 24, 1878.

[House Bill No. 392.]

AN ACT

To make temporary transfers, heretofore made by the county commissioners of Vinton county, permanent.

WHEREAS, The county commissioners of Vinton county have at different times, made numerous temporary transfers of certain funds; and

WHEREAS, it appears that it is unnecessary that such funds be replaced; therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That said temporary transfers be and the same hereby are made permanent.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed April 24, 1878.

[House Bill No. 467.]

AN ACT

To authorize the town council of Waverly, Pike county, to issue bonds and levy a tax.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That for the purpose of building a town hall, appropriating land, opening and grading streets and alleys, and improving the streets of the village of Waverly, Pike county, the town council of said village is hereby authorized to issue and sell the bonds of said village, not exceeding five thousand dollars, in amounts and in such denominations as said council may determine, not less than one hundred, nor more than five hundred dollars each, said bonds to be signed by the mayor, and countersigned by the clerk, payable at such time as the council may determine, not exceeding eight years after date, bearing a rate of interest not exceeding seven per cent. per annum, payable semi-annually: provided, that said bonds shall not be sold for less than their par value.

SEC. 2. For the purpose of paying said bonds so authorized to be issued by this act, said council of said village are hereby authorized and empowered to levy a tax upon all the taxable property of said village, as provided by law, in addition to the amount already allowed by law, to be levied every year during the period said bonds have to run, sufficient in amount each year to redeem that portion of the bonds issued in pursuance of this act, that will fall due during said year, and all the accruing interest on said bonds.

SEC. 3. The clerk of said corporation is hereby required to make a registry of said bonds, when issued, in some book which the law now requires him to keep, giving the number, amount, date, rate of interest, when payable, and to whom issued; and shall indorse on the back of each bond the word "Registered," and shall witness the same with his official signature.

SEC. 4. That before the issuing of said bonds, the question of issue shall be submitted to the qualified electors of said village, at a general or special election, of which ten days notice shall be given in one or more newspapers printed in said village, of the amount of said bonds to be issued, and the time and place when said election will be held in said village; and if two-thirds of the electors voting at said election, on said question, shall vote in favor of said issue of bonds, then, and not otherwise, shall said bonds be issued, and at said election, those voting in favor of said issue shall have written or printed on their ballots, "For improvement bonds;" and those voting against said issue shall have written or printed on their ballots, "Against improvement bonds."

SEC. 5. Before said question of issuing said bonds shall be submitted to said electors, the town council shall pass a resolution ordering said question to be submitted to the vote aforesaid: provided, said vote shall be ordered and taken within one year from the passage of this act; otherwise said council shall have no right to issue said bonds.

SEC. 6. This act shall be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed April 24, 1878.

[Senate Bill No. 9.]

AN ACT

To authorize the board of county commissioners of Hancock county to levy a tax for the purpose of building a county jail.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the board of county commissioners of Hancock county be and they are hereby authorized to levy a tax upon the taxable property of said county, listed on the general duplicate for taxation for the years 1878, 1879, 1880, the amount of which proposed tax shall be fixed by said board of county commissioners, which in no event shall exceed in the aggregate twenty-five thousand dollars, and not to exceed one-third of said twenty-five thousand dollars in any one year.

SEC. 2. Said board of county commissioners of said county may anticipate the collection of said tax, by borrowing any sum not exceeding the amount levied or to be levied, at a rate of interest not to exceed seven per cent. per annum, interest payable semi-annually, and issue notes or bonds therefor, payable upon the collection of such tax, and the notes or bonds issued under this act shall, in no case, be sold for less than their par value.

SEC. 3. Said board of county commissioners shall be and they are hereby authorized to sell and convey the present jail and cite, and apply the proceeds of such sale to the purchasing of a new site in some more suitable place, to be designated by said county commissioners.

SEC. 4. This act shall take effect and be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed April 24, 1878.

[House Bill No. 336.]

AN ACT

To authorize the trustees of Salem township, Warren county, Ohio, to transfer certain funds therein named to the township fund of said township.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the trustees of Salem township, Warren county, Ohio, are hereby authorized to transfer the balance remaining in the treasury of said township, of a fund levied for the purpose of erecting a township house, to the general or township fund of said township.

SEC. 2. This act shall take effect from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed April 24, 1878.

[House Bill No. 215.]

AN ACT

To authorize the council of the incorporated village of Leesburg, Highland county, to issue bonds and borrow money for the erection of a town hall, and to transfer certain funds for that purpose

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the council of the incorporated village of Leesburg, in the county of Highland, Ohio, be and are hereby authorized, for the purpose of raising money for the erection of a town hall in said village for the use thereof, to issue and sell the bonds of said village not exceeding five thousand dollars in amount, said bonds to be signed by the mayor and clerk of said village, and to be in sums not less than fifty nor more than five hundred dollars each, and bearing interest at a rate not exceeding seven per cent. per annum, the principal and interest of said bonds to be paid as the village council may direct, not exceeding seven years from the issuing of said bonds: provided, the said bonds shall be sold at not less than their par value.

SEC. 2. That before said town hall shall be erected or contracted for, the question as to whether such town hall shall be erected, shall be at either a regular spring or fall election (ten days' notice having been given by posting notice at three public places within said village), submitted to the voters of said village for their approval or disapproval, and if a number of votes equal to a majority of all the votes cast at said election shall be cast in favor of erecting such town hall, said council may proceed to erect such town hall, and not otherwise.

SEC. 3. That for the purpose of paying said bonds and the interest thereon, as the same may become due, the said village council are hereby authorized and empowered to levy a tax on the taxable property of said incorporation in such amounts annually not exceeding seven years from the issue of said bonds, as will be sufficient to pay the principal and interest of said bonds as they may become due in each year, as the said village council may determine, and the money so raised shall not be used for any other purpose than to pay said bonds and interest thereon.

SEC. 4. That said council of the incorporated village of Leesburg be and they are hereby authorized to permanently transfer six hundred and forty dollars ($640.00) of the fire department fund, and two hundred and twenty dollars ($220 00) of the public cistern fund now in said village treasury to the public building fund of said village.

SEC. 5. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed April 25, 1878.

[House Bill No. 358.]

AN ACT

To authorize the commissioners of Defiance county, Ohio, to complete a bridge therein named.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the commissioners of Defiance county be and they are hereby authorized

to proceed to complete the bridge across the Maumee river, near Delaware Bend, in said county, including the superstructure and embankments therefor, and pay for the same from the bridge fund now levied and collected, though the cost of said bridge, when completed, should exceed the sum of ten thousand dollars.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed April 25, 1878.

[House Bill No. 364.]

AN ACT

Supplementary to the act entitled "an act relating to the payment of certain bonds of the city of Xenia," passed February 22, 1877. (O. L., vol. 74, page 396.)

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That so much of the tax designated in said act of February 22, 1877, as is or may not be required annually to pay the principal and interest on the bonds therein referred to as the same becomes due, may be used by the council of said city for bridge purposes; but said council shall make provision for the payment of said bonds as they mature.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed April 27, 1878.

[House Bill No. 386.]

AN ACT

To authorize the trustees of Richland township, Clinton county, Ohio, to transfer certain funds therein named.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That the trustees of Richland township, Clinton county, Ohio, are hereby authorized to transfer any balance of money in the township house fund of said township, to the road and poor fund of said township.

SEC. 2. This act shall be in force and take effect from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 1, 1878.

[House Bill No. 436.]

AN ACT

To authorize the board of education of Napoleon, Henry county, to issue bonds for the redemption of other bonds.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the board of education of the union school district of Napoleon, Henry county, Ohio, for the purpose of raising money to redeem the bonds of said board of education, issued under the act of March 12, 1870, entitled "an act to enable the board of education of Napoleon, Henry county, union school district, to borrow money to build a school house," and now outstanding, be and they are hereby authorized to issue bonds of said school district, of Napoleon, Henry county, Ohio, in sums of not less than fifty dollars each, and not to exceed the amount of said outstanding bonds, and not to exceed in the aggregate thirty thousand dollars, and at a rate of interest not exceeding seven per centum per annum, interest payable semi-annually, in April and October; said bonds to be made payable in a period of time not exceeding ten years, and redeemable at the pleasure of the board at any time after two years.

SEC. 2. Said bonds shall be signed by the president of the board, and attested by the secretary, who shall also keep a record of all bonds issued, to whom issued, and when payable; and said bonds shall be negotiable, but shall not be disposed [of] at less than their par value.

SEC. 3. That said board of education is hereby authorized, whenever it shall in their opinion become necessary to levy a tax to pay said bonds, or the interest thereon, to certify that fact to the auditor of Henry county, and said auditor shall cause such sum, so certified by said board to be necessary, to be levied upon the taxable property of said union school district, and the same shall be collected as other school taxes are, or may be, and paid to the treasurer of said board: provided, that said sum so levied shall not exceed in any one year ten mills on the dollar of the valuation of the taxable property of said district, in addition to that now, or which may be hereafter authorized by law to be raised for school and school house purposes. No part of said moneys so raised by such levy shall be used for any other purpose than the payment of said bonds, and no part of the moneys received from the sale of bonds authorized to be issued by this act shall be used for any other purpose than the redemption of said bonds for which such new issue is made.

SEC. 4. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 1, 1878.

[House Bill No. 440.]

AN ACT

To authorize the commissioners of Scioto county to borrow money, on the bonds of the county, to discharge the existing liabilities of said county now in the shape of turnpike floating orders.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the commissioners of Scioto county, Ohio, be and they are hereby au-

thorized to issue the bonds of said Scioto county, not to exceed forty thousand dollars ($40,000), bearing a rate of interest not exceeding six per centum per annum, payable semi-annually, signed by said commissioners and countersigned by the auditor of said county, and redeemable in one, two, three and four years from the date thereof, at the office of the treasurer of said county, (and which bonds said commissioners are authorized to sell at not less than their par value, and accrued interest to the date of sale, and that no interest, brokerage or commission shall be allowed said commissioners or any other person, for or in the sale of said bonds); and said bonds shall be issued in such amounts as may be necessary to discharge the existing liabilities of said county incurred in the building of free turnpikes and now in the shape of floating orders, in sums as the commissioners shall deem most convenient: provided, that whenever any holder of any of said floating orders shall present the same for that purpose, the commissioners shall redeem them by making out and delivering to such person a bond or bonds, issued as aforesaid, to the amount of such orders so presented, including interest on said orders at six per centum per annum from the date the same have been, or may hereafter be, indorsed by the treasurer of said county not paid for want of funds.

SEC. 2. That for the redemption of said bonds and the payment of said floating indebtedness, the county commissioners are hereby authorized to levy on all the taxable property in Scioto county, Ohio, for each of the years A.D. 1879, 1880, 1881 and 1882, such amounts as shall be necessary to pay the interest on said bonds and indebtedness, and at least one-fourth of the principal thereof.

SEC. 3. That in case any of said floating orders shall not be presented for redemption or conversion into bonds until there shall be funds in the county treasury, arising from said levies, or from the proceeds of the sale of said bonds, for the payment of the same, the said orders shall then be paid with interest as aforesaid, and need not be first converted into bonds.

SEC. 4. That this act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 1, 1878.

[House Bill No. 417.]

AN ACT

To authorize the trustees of Spencer township, Hamilton county, Ohio, to sell and convey a certain tract of land, and to reinvest the proceeds.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That the trustees of Spencer township, Hamilton county, Ohio, are hereby authorized to sell the following tract of land situated in said township, and known as the old Crawfish graveyard, and containing about seven acres, and to reinvest the funds in a new graveyard, or one already established, and to reinter the dead from the old to the one in which the funds are invested.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 1, 1878.

[House Bill No. 465.]

AN ACT

To authorize the trustees of the township of Mayfield, Cuyahoga county, to transfer funds therein named.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the trustees of the township of Mayfield, Cuyahoga county, Ohio, are hereby authorized to transfer four hundred ($400) dollars from the general fund to the vault fund of said township.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 1, 1878.

[House Bill No. 468.]

AN ACT

For the relief of B. W. Canfield, treasurer of Chardon township, Geauga county, Ohio.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the trustees of Chardon township, Geauga county, Ohio, be and they hereby are authorized to cause to be levied upon the taxable property of said township, a tax sufficient in amount to refund the sum of not exceeding fifty per cent. of six hundred and sixty-seven dollars and fifty-six cents to B. W. Canfield; the said sum of money being funds of said township of Chardon, deposited by the said Canfield, he at the time being treasurer of said Chardon, in the bank of Canfield, Murry & Canfield, at Chardon, in said county of Geauga, in pursuance of the act therefor, passed March 20, 1867, and said fifty per cent. of said sum of money having been lost by the failure of said banking company, and to relieve the said Canfield and his sureties from all responsibility on account of the loss of said money, to the amount not exceeding said fifty per cent. of six hundred and sixty-seven dollars and fifty-six cents only. The levy and relief provided for in this section shall only be made and furnished upon the submission by the trustees of said township, at some general election, twenty days' previous notice having been given, of the propriety of so doing, to the qualified electors of said township, and that two-thirds of all the votes cast at said election shall be in favor thereof.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 1, 1878.

[Senate Bill No. 172.]

AN ACT

To authorize the commissioners of Athens county, Ohio, to build a court house.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the commissioners of Athens county, be and they are authorized to build a court house, with public offices, at the county seat, on the lot on which the former court house was situate, at a cost not exceeding fifty thousand dollars.

SEC. 2. To enable said commissioners to carry into effect the provisions of this act, they are hereby authorized to issue bonds of said county for sums not less than fifty dollars, and not to exceed one thousand dollars each, bearing interest at a rate not exceeding seven per centum, payable semi-annually, maturing in one, two, three, four, five, six, and seven years, in equal amounts, but redeemable at the pleasure of said commissioners, said bonds in the aggregate not to exceed said sum of fifty thousand dollars: provided, that said bonds shall not be disposed of for less than their par value; said bonds to be signed by at least two of said county commissioners, and countersigned by the auditor of said county.

SEC. 3. That for the purpose of paying said bonds, and the interest thereon, said commissioners are empowered, in addition to levies now authorized by law, to levy a tax, annually, upon all the taxable property of said county, sufficient therefor, but not exceeding one and one-half mills on the dollar of valuation on the grand duplicate of said county in any one year, which shall be placed on the duplicate of said county, and collected as other taxes levied by said commissioners, and it shall not be lawful for said commissioners to appropriate any of said fund for any other purpose than that for which it was levied.

SEC. 4. The commissioners of said county, and the auditor, treasurer, and clerk of the court of common pleas, for said county, shall constitute a board to determine the plan of said court house and public offices, and they may personally examine similar structures anywhere in the state, and they shall call to their assistance a competent architect to prepare drafts and specifications of the plan to be determined upon; and the work of the building of said structure may be done either under the supervision of said commissioners of said county, or that of a superintendent to be appointed by them, and subject to their control, in accordance with the plan determined upon by the board aforesaid, or a majority thereof, or any modifications of the same that such board may make.

SEC. 5. Provided, said board shall not issue said bonds or make said levy, until the proposition whether said court house and offices shall be built, shall have been submitted to the electors of said county at a called election, to be held on Saturday, the first day of June next therein, and a ballot taken on said proposition in the following form, to wit: "For court house, to cost not to exceed $50,000—Yes," For court house, to cost not to exceed $50,000—No." The commissioners of said county shall advertise in four successive issues next preceding said election, in at least two newspapers of opposite politics, published in said county, having the largest circulation therein, stating the form of said ballot, when said vote will be taken and the object thereof; said election, and the return thereof, and the expense of said advertising shall be conducted and paid for as is provided for by the act entitled "an act to amend sections two and three of an act entitled an act prescribing the rate of taxation for county, bridge, road, and township purposes, and to repeal certain acts

therein named, passed April 19, 1877, passed March 4, 1878," said commissioners shall not be authorized to proceed according to this act, to construct said buildings, make said levy, or issue said bonds, unless a majority of the votes actually cast in pursuance hereof shall be in favor of the same.

SEC. 6. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 3, 1878.

[Substitute for House Bill No. 189.]

AN ACT

To enable the commissioners of Ross county and other counties to purchase toll roads and convert the same into free roads.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the county commissioners of Ross, Auglaize, Butler, Fairfield, Warren, Clinton, or Brown counties, when petitioned to do so by at least fifty freeholders, citizens of the counties, shall and they are herehy authorized and required to purchase any or all of the toll roads, or parts of toll roads, within said counties, as hereinafter provided: provided, however, that before such purchase is made, the commissioners of the county in which the people shall vote in favor of purchasing the toll roads, shall make an order to that effect on their journal, and submit the purchase to the voters of said county, t any regular spring or fall election, giving at least ten days' notice thereof in at least two newspapers published in the county; and at such election, the voters who are in favor of such purchase shall inscribe on their ballots, "Purchase of toll roads, yes;" and those opposed thereto shall inscribe on their ballots, "Purchase of toll roads, no;" and if, at any such election, a majority of those voting on said question are in favor of such purchase, the said commissioners may make such purchase, but not otherwise. The vote on said question shall be returned by the judges of election to the clerk of the court of common pleas, who shall open, count, and declare the same, as in an election for county officers, and certify the same to the county commissioners.

SEC. 2. In case the vote so taken shall result in favor of the purchase, three disinterested appraisers, of all the roads proposed to be purchased, shall be appointed, as follows: One by said commissioners, one by the probate judge of said county, and the other by the court of common pleas of said county, or a judge of said court, resident of the subdivision in which said county is situate; and said appraisers, after being first sworn faithfully and honestly to discharge their duties in that behalf, shall personally inspect said roads so far as the same are within the county, and make and return in writing to said commissioners a valuation of said roads.

SEC. 3. If, on the coming in of said report the same is satisfactory to said commissioners and the probate judge of the county, and they, or a

majority of them, indorse their approval, as to all or any of said roads, the commissioners shall submit to the company or companies of the road or roads which have been so appraised, and the appraisal thereof approved as aforesaid, a proposition for the purchase thereof, at a price not exceeding in any case such appraisal; and if such proposition is accepted by such company or companies, the said commissioners shall thereupon purchase the same and take conveyance thereof from such company or companies, and pay such company or companies in money or in bonds, to be issued as hereinafter specified; and thereupon such roads so purchased shall cease to be toll roads, and become free roads, to be kept in repair in the manner prescribed for roads constructed under the act of March 20, 1867, entitled "an act to authorize the county commissioners to construct roads, on the petition of a majority of resident land-owners along and adjacent to the line of said road, and to repeal an act therein named," and the acts amendatory thereof and supplementary thereto.

SEC. 4. For the purpose of paying for said roads, or parts of roads, and for refunding assessments as hereinafter provided, said commissioners shall issue bonds, payable at such times and in such amounts as will be, as near as practicable, equal to the semi-annual collection of taxes levied for that purpose, which bonds shall bear interest not exceeding seven per centum, payable annually, which bonds may be delivered, to said companies in payment for said roads, or parts of roads, or sold for money at not less than their par value; but none of said bonds shall run more than eight years from date; and for the payment of said bonds, said commissioners are authorized and required to levy, annually, on the taxable property of said counties, in addition to the taxes they are otherwise authorized to levy, such sum annually as will fully pay said bonds and the interest thereon, and for refunding said assessments: provided, however, that all persons residents of said counties, who have paid or shall pay any assessment for the construction of any roads under said act of March 29, 1867, or the acts amendatory thereof or supplementary thereto, which road has not been converted into a toll road, and who are required to pay the tax levied for such purpose or any part thereof, shall be entitled to have repaid to them out of any tax they are required to pay for said purchase, the amount of said assessment so paid by them, which repayment shall in no instance exceed the amount of said tax they shall have so paid; and, for the purpose of adjusting this refunding of taxes, the auditors of said counties shall prepare a book of all such assessments paid in the counties, in which shall be noted all amounts so refunded, and in no instance shall a greater amount be refunded to any person than the assessment paid by him, and no tax shall be refunded but on the order of the auditor; and provided further, that all persons who shall demand or accept the refunding of the assessments paid by them or any part thereof, shall hereby release all right to have the road or roads to the construction of which they have contributed, to be converted into toll road or roads, and in any attempt to convert such road or roads into toll road or roads, the names of such persons and the assessments by them contributed shall be counted against the conversion of such road or roads into toll roads.

SEC. 5. The said appraisers shall be paid by the county, upon the allowance of the commissioners, three dollars per day and their necessary expenses, for the time actually employed in the buisness of their appointment; and the county auditor and county treasurer, for their

services under this act, shall be entitled to one-half of the lowest rate of fees now allowed to them by law for like services.

SEC. 6. The sale under this act by any company owning a toll road of such part of said road as lies within said county, shall not effect their organization or right as to such part or parts of their road as may be situate outside of said county.

SEC. 7. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 3, 1878.

[Senate Bill No. 136.]

AN ACT

[For the relief of Robert Corchoran.]

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That the county commissioners of Jefferson county, Ohio, be and they are hereby authorized to ascertain the amount which, in their judgment, is in justice due to Robert Corchoran, of Steubenville, Ohio, on account of taxes paid by said Robert Corchoran, from the year 1866 to 1870, both inclusive, on a gross over-valuation of his premises, known as the Corchoran building, on Market street, Steubenville, Ohio; and the said commissioners are also authorized to direct the auditor of said county to draw his warrant on the county treasury for the amount so adjudged in favor of said Robert Corchoran.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 4, 1878.

[House Bill No. 431.]

AN ACT

To authorize the village of Archbald, in Fulton county, Ohio, to transfer certain funds.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That the council of the incorporated village of Archbald, Fulton county, Ohio, be and it is hereby authorized to transfer the general fund, road fund, marshal and police fund, street, sewer, water, bridge and township funds on hand and in the treasury of said village on the 21st day of March, 1878, to the fire engine debt fund.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed May 6, 1878.

[House Bill No. 510.]

AN ACT

To authorize the transfer of certain funds in the village of Brooklyn to other funds in said village.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the council of the incorporated village of Brooklyn may transfer from street lighting fund seven hundred dollars ($700.00), from corporation fund eight hundred dollars ($800.00), and from the street and road fund two hundred and twenty-five dollars ($225.00), to Columbus street improvement fund.

SEC. 2. This act shall take effect from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed May 6, 1878.

[Substitute for House Bill No. 95.]

AN ACT

To authorize the commissioners of Brown county, Ohio, to levy a tax and issue county bonds to pay the bonds issued by the commissioners of said county for the construction of the "Arnheim free turnpike," and interest and bonds of certain other roads in said county.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the commissioners of Brown county, Ohio, be and they are hereby authorized to pay the bonds heretofore issued by them, in anticipation of the taxes arising from the assessments levied on the lands lying within the present boundaries of the Ripley and Arnheim free turnpike as now assessed, and also the bonds due and unpaid, and the interest thereon on all the remaining free turnpikes of said county formerly built and constructed under the law known as the two mile law: provided, that no person or persons formerly assessed on said remaining free turnpike roads shall be exempt from any assessments appearing on the duplicates of said roads prior to the first day of January, 1877.

SEC. 2. That said county commissioners may issue bonds of the county, bearing six per cent. interest, payable annually, running not exceeding ten years, to raise money to pay the outstanding bonds, and interest thereon, heretofore issued on the said free turnpike roads, which bonds shall not be sold for less than par value.

SEC. 3. That the commissioners are hereby authorized to levy a special tax on the real estate heretofore assessed for the construction of the Ripley and Arnheim free turnpike, to pay in part the bonds issued, as provided in this act, to the amount of forty hundred dollars per mile for each and every mile of said Ripley and Arnheim free turnpike, said tax to be levied in twelve equal semi-annual installments: provided, that where any person, prior to the taking effect of this act, has paid more than their ratable share of said forty hundred dollars per mile, said commissioners shall cause the same to be refunded to the person or persons paying the same.

SEC. 4. Said commissioners are hereby authorized to assess and levy a tax upon all the taxable property of said county, not exceeding one mill on the dollar, for ten years, to be used in liquidation of said bonds.

SEC. 5. This act shall take effect and be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed May 6, 1878.

[House Bill No. 470.]

AN ACT

To authorize the trustees of Athens township, Athens county, Ohio, to transfer money from the local bounty fund of said township to the road fund.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the trustees of Athens township, Athens county, Ohio, be and are hereby authorized to permanently transfer from the local bounty fund of said township the sum of four hundred and fifty-two and eighty-nine one-hundredths dollars to the road fund of said township.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed May 6, 1878.

[House Bill No. 297.]

AN ACT

To authorize the surviving trustees of the Christian church of Neville, Clermont county, to sell real estate belonging to said church organization.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the surviving trustees of the Christian church organization, in the town of Neville, Clermont county, be and they are hereby authorized and empowered to sell to the best advantage the church building and lot belonging to the said Christian church organization, in the town of Neville, Clermont county, and to execute and deliver a deed in fee simple to the purchaser therefor.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed May 6, 1878.

[House Bill No. 437.]

AN ACT

Authorizing the county commissioners of Muskingum county, in the state of Ohio, to levy an additional poor tax.

WHEREAS, The ordinary revenues of said county, together with the additional poor tax now authorized by law to be levied in such behalf, are insufficient for the support of the poor of said county; and,

WHEREAS, The poor fund of said county is now deficient more than six thousand dollars; therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the county commissioners of Muskingum county, in the state of Ohio, be and they are hereby authorized, in the years 1878, 1879, and 1880, in addition to the tax authorized by the fourth section of "an act prescribing the rate of taxation for county, bridge, road, and township purposes, and to repeal certain acts therein named," passed and took effect April 19, 1877, to levy and collect an additional tax, for the support of the poor of said county, not exceeding four-tenths of one mill on the dollar of the valuation of the property in said county, taxable for state and county purposes, to be entered on the grand list and collected as other taxes.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed May 6, 1878.

[House Bill No. 390.]

AN ACT

To authorize the county commissioners of Vinton county to make an additional levy for county purposes.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the county commissioners of Vinton county be and they hereby are authorized to levy, for county purposes, in addition to that now provided by law, an amount not to exceed one mill on each dollar valuation of all the taxable property of said county.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed May 6, 1878.

[House Bill No. 469.]

AN ACT

To authorize the trustees and board of education of Sheffield township, Lorain county, to build a town hall and school house jointly.

WHEREAS, the electors of Sheffield township, Lorain county, at the annual spring election of this year, decided to build a town hall, and it

is desired by the trustees and board of education of said township to build the hall and a school-house jointly; therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the trustees and board of education of Sheffield township, Lorain county, are hereby authorized to build jointly, on such site as they may agree upon, a town hall for said township, and a school-house, and to purchase and take title for, as they may agree, a suitable site for such building.

SEC. 2. For the purpose of paying their part of the expense of such site and building, the said township trustees are authorized to levy taxes not exceeding in amount one thousand dollars in addition to the taxes now authorized to be levied, which amount may be levied in one year, or divided into levies of two or more years; and to anticipate the money to be raised by taxation, said trustees may borrow any sum needed for said purposes not greater than the amount to be raised.

SEC. 3. This act shall take effect from its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed May 6, 1878.

[House Bill No. 490.]

AN ACT

To authorize the transfer of funds in the treasury of the incorporated village of Elyria, Lorain county.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the town council of the incorporated village of Elyria be and the same is hereby authorized to transfer funds in the treasury of said village, which are now in or that may hereafter be paid into the sinking fund, to any other fund or funds of said treasury.

SEC. 2. This act shall take effect on its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed May 6, 1878.

[House Bill No. 474.]

AN ACT

To authorize the commissioners of Hardin county to increase the levy for county purposes, and to transfer certain funds therein named.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the commissioners of Hardin county be and they are hereby authorized to levy upon each dollar of the taxable property of said county, for county purposes, either during the year 1878 or the year 1879, a per cent. not exceeding one and five-tenths mills in addition to the levy now authorized by law for said county purposes.

SEC. 2. Said commissioners are also hereby authorized to transfer any

funds remaining in the county treasury credited to the building fund, which may be unexpended after the first day of September, 1878, to the county fund of said county.

SEC. 3. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed May 6, 1878.

[House Bill No. 483.]

AN ACT

To authorize the commissioners of Ottawa county to borrow money to pay indebtedness and loss caused by the failure of the City Bank of Toledo.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the commissioners of Ottawa county be and they are hereby authorized and empowered to issue bonds not to exceed three thousand dollars ($3,000), bearing a rate of interest not exceeding seven per cent. per annum, to be of such denominations as the commissioners of said county may determine; the said bonds shall be signed by the said county commissioners and countersigned by the county auditor, and payable at such time as they may determine, not exceeding five years from date, the interest payable semi-annually, and shall not be sold for less than their par value; and the money from the sale of said bonds shall be applied to the payment of the indebtedness of said county.

SEC. 2. The commissioners of said county shall provide for the payment of said bonds and interest, by setting apart from the levies of the county a sufficient amount to pay said bonds and interest.

SEC. 3. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed May 6, 1878.

[House Bill No. 472.]

AN ACT

To divide Falls township, Hocking county, into two election precincts.

SECTION. 1. *Be it enacted by the General Assembly of the State of Ohio.* That the township of Falls, Hocking county, be and the same is hereby divided into two election precincts as follows: The first shall be called New Gore precinct and shall include the following territory, to wit: Sections twenty five (25), twenty-six (26), twenty-seven (27) twenty-eight (28), thirty-three (33), thirty-four (34), thirty-five (35), thirty-six

(36), and the north-east half of the north-east quarter of section twenty-nine (29), in said township. The second shall consist of the balance of the territory of said Falls township and be known as Falls precinct.

SEC. 2. This act shall be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 7, 1878.

[House Bill No. 178.]

AN ACT

To authorize the directors of the union school district of Chagrin Falls, Cuyahoga county, to levy and assess an additional tax.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the directors of the union school district of Chagrin Falls, Cuyahoga county, be and they are hereby authorized to levy and assess upon the personal and real property of said district, in addition to the amount now authorized by law, five (5) mills upon the dollar valuation of said property, for the purpose of raising funds for repairing the school building in said district, and furnishing apparatus for the same. Such assessment to be made in one or two installments, as said board of directors may determine, but in no event to exceed in the aggregate the sum of five (5) mills.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 7, 1878.

[House Bill No. 534.]

AN ACT

For the relief of Horace S. Horton.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the county auditor of Meigs county, Ohio, be and the same is hereby authorized at the next semi-annual apportionment of taxes of said county, to remit to Horace S Horton one hundred and thirty-five dollars and sixty cents ($135 60), in account of over payment of taxes in the year A D. 1871, and for the purposes of realizing said sum the county auditor shall withhold from the next apportionment the proper amount of state, county, township, school and municipal taxes as shall be in the same proportion as those taxes are now levied for the several purposes herein named.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 7, 1878.

[House Bill No. 416.]

AN ACT

To authorize the city council of Bellaire, Ohio, to appropriate and pay the amount assumed by said city for purchase of site for state tobacco warehouse.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the council of the city of Bellaire are hereby authorized to appropriate and pay Harrison Bute, the sum of three hundred and sixty-five dollars out of any money in the treasury not otherwise appropriated.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 7, 1878.

[House Bill No. 391.]

AN ACT

To authorize the trustees of Richland township, Vinton county, to levy an additional tax for township purposes.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the trustees of Richland township, Vinton county, be and they are hereby authorized to levy, for the year 1878, in addition to that now authorized by law for township purposes, one and one-fourth mills on each dollars' valuation of all the taxable property of said township.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 7, 1878.

[House Bill No. 360.]

AN ACT

Supplemental to an act entitled "an act to authorize the trustees of Brecksville township, Cuyahoga county, to levy a tax for certain purposes mentioned therein," passed May 5th, 1877.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the trustees of the township of Brecksville, Cuyahoga county, be and they are hereby authorized to borrow money, not to exceed in amount the sum of twenty-five hundred dollars, for the purpose of building a vault or receptacle for the dead, as provided in the act to which this is supplemental; and for the purpose aforesaid, said trustees are hereby authorized and empowered to issue bonds to be signed by said trustees and attested by the clerk of said township, in such sums as the trustees

may provide, bearing interest at a rate not to exceed seven per cent. per annum, to be paid annually; said bonds to be payable at any time within four years after the issuing thereof, and said bonds shall not be sold for less than the par value thereof.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 7, 1878.

[House Bill No. 372.]

AN ACT

For the relief of W. J. Jacobs.

WHEREAS, W. J. Jacobs was, in the month of August, A.D. 1877, appointed treasurer of the special school district of the incorporated village of Georgetown, Brown county, Ohio, and was by law made custodian of the funds of said special district; and,

WHEREAS, The school board of said special district having failed to supply their treasurer with a safe and proper means for keeping their funds; and when the said W. J. Jacobs was required by the treasurer of Brown county, aforesaid, to receive the funds of said special school district, he, the said W. J. Jacobs, being authorized by said board of school directors, deemed it prudent and for the best interest of said special school district, pursued the course customary with his predecessors, and deposited said funds with the old established banking house of F. J. Phillips & Co., at Georgetown, Ohio, for safe keeping, and for the use of said special school district; and,

WHEREAS, The said banking house of F. J. Phillips & Co., in the month of November, A.D. 1877, became insolvent and suspended payment, and on the third day of December, 1877, made an assignment for the benefit of their creditors, having in their possession at the time of such failure five hundred, seventy-four dollars and fifty-three cents, belonging to said special school district; therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That at some general or special election, the board of school directors of the special school district of the incorporated village of Georgetown, Brown county, Ohio, are hereby authorized, and it is made their duty to notify the qualified electors of said special school district that they will be called upon to vote on the question of relief to said W. J. Jacobs and sureties, at such election; and that it is further provided, that said board of school directors of said special school district are hereby required to give at least ten days' notice thereof, preceding such election, by posting said notices in at least five public places in said special school district. The ballots at said election shall be voted in form, as follows: "For relief to W. J. Jacobs—Yes," or "For relief to W. J. Jacobs—No;" and if two-thirds of the votes cast at said election shall be for relief of W. J. Jacobs, "Yes," then the board of school directors of said special school district, if necessary, shall levy a tax on the taxable

property of said special school district for the amount lost by said deposit with F. J. Phillips & Co., and certify the same to the auditor of Brown county, as other taxes.

SEC. 2. That in case said relief is voted to the said W. J. Jacobs and sureties, it is provided, that before release shall be made, the said W. J. Jacobs shall assign to the school board of said special school district, for the use of said special school district, his claim against said F. J. Phillips & Co., for the money deposited by him as aforesaid.

SEC. 3. This act shall take effect and be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 7, 1878.

[House Bill No. 280.]

AN ACT

To create a special school district in Brown township, Delaware county, Ohio.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the territory comprised in the Eden school district, Brown township, Delaware county, Ohio, described and bounded as follows, to wit:

Beginning at the north-west corner of the lands owned by George Leonard; thence east to the south west corner of the lands of George Moore; thence north to the north-west corner of lands of George Moore; thence east to north-west corner of lands of W. K. Thrall; thence north to north-west corner of lands of N. I. Longwell; thence east to north-west corner of lands of W. W Williams; thence south to south-west corner of lands of W. W. Williams; thence east to north-east corner of lands of J. A. Carothers; thence south to south-east corner of lands of J. A. Carothers; thence west to north-west corner of lands of J. W. Matthews; thence south to south-east corner of lands of George Hipple; thence following Alum creek to southern boundary of lands of M. M. Glass; thence west to south-west corner of lands of Harlo Williams; thence north to north-east corner of lands of H. Williams; thence west to south west corner of lands of Jonathan Leonard; thence north to south-west corner of lands of F Cook; thence east to south-east corner of lands of F. Cook; thence north to north-west corner of lands of George Leonard, the place of beginning, be and the same is hereby created and declared to constitute a special school district.

SEC. 2. Said special school district shall be known as Eden special school district, and shall be governed by such laws as now are, or may hereafter be in force relating to special school districts.

SEC 3. The six members constituting the board of education at the time of the passage of this act. shall, by lot, determine which three shall constitute the board of education to serve until their successors shall be elected and qualified.

SEC. 4. This act shall be in force and take effect from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 7, 1878.

[Senate Bill No. 47.]

AN ACT

To authorize and empower the auditor of Licking county to refund certain taxes improperly collected.

WHEREAS, The auditor of Licking county, Ohio, on the first Monday of January, A.D. 1853, sold, at a forfeited tax sale, twenty-four and one-half feet off the west side of the east half of in-lot No. 115, in said city of Newark, to William Parr and Thomas Ewing; and,

WHEREAS, The said Parr and Ewing have, ever since that time, paid all the taxes assessed thereon; and,

WHEREAS, The court of common pleas of said county, at its October term, 1877, found and decreed that the sale of said twenty-four and one-half feet was illegal and void, because the taxes had, during all the time aforesaid and before, been paid by the owner of the same, and the said purchaser acquired no lien thereon for the taxes then, or since paid thereon, and remitted said purchasers to their remedy to collect back the same from the county and state; and,

WHEREAS, Under the laws of Ohio now in force, there is no authority given, to refund to said purchasers, the taxes so paid, except for a period of five years last past; therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the auditor of Licking county, Ohio, be and he is hereby authorized and required to issue his warrant on the treasury of said county for the refunding of the taxes to the said Parr and Ewing, paid by them on said original purchase, and also those subsequently paid on said twenty-four and one-half feet off the west side of the east half of in-lot 115, in the city of Newark, Ohio.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 7, 1878.

[House Bill No. 409.]

AN ACT

For the relief of Peter Weikert.

WHEREAS, Peter Weikert was the duly elected and qualified treasurer on the 15th day of October, 1875, of Seneca township, Seneca county, Ohio, and as such treasurer had on deposit in the First National Bank of Tiffin, Ohio, the sum of six hundred and eighty-four dollars belonging to said township of Seneca, and on said 15th day of October, 1875, the said First National Bank of Tiffin failed, and its assets went into the hands of a receiver, and have not and will not be able to pay but a small dividend upon its indebtedness, and the said Peter Weikert is not able, without great suffering, to pay such loss; and,

WHEREAS, A large number of the tax-payers of said township, by petition to the general assembly, represent that said Peter Weikert acted

with reasonable prudence and business like discretion in making such deposit. That no safe had been provided for the safe keeping of the funds of said township, and that said Peter Weikert was, therefore, in nowise at fault in making such deposit, and ask that this general assembly do extend relief to said Peter Weikert; therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the trustees of Seneca township, Seneca county, Ohio, are hereby authorized to release Peter Weikert and his sureties on his official bond, and from all other liabilities for the payment of the said ($684) six hundred and eighty-four dollars, so as aforesaid deposited with the First National Bank of Tiffin: provided, that before said release shall be made, said Peter Weikert shall assign and transfer unto the trustees of said township of Seneca his certificate of the assignee of said bank of $684 the amount so deposited by him: provided further, that before the said trustees shall release said Peter Weikert from the payment of said $684 they shall submit the question of release to the qualified voters of Seneca township, at a special election, or the first general election held after the passage of this act, and if "two-thirds of all those voting at said election" shall vote in the favor of release, they shall enter said release upon the books of said school board.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 7, 1878.

[Senate Bill No. 169.]

AN ACT

To authorize the council of the city of Lima to levy a tax for library purposes.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the council of the city of Lima be and is hereby authorized to levy, annually, a tax not exceeding one mill on the dollar, upon the property on the grand duplicate, within said city of Lima, for the purpose of raising a fund to be used in maintaining a free library in said city of Lima.

SEC. 2. That the fund so raised shall be paid over by the county treasurer to the treasurer of the Lima reading-room and library association, said treasurer of said association having first given bond to the state of Ohio in the sum of five thousand dollars, with sureties to the satisfaction of the directors of said reading-room and library association, conditioned that he will faithfully discharge his duties as treasurer, and pay over to his successor in office all moneys and other property which may come into his hands as such treasurer.

SEC. 3. That the fund so raised as aforesaid shall be used exclusively for the purposes of said association in the maintenance of a free reading-room and library in the city of Lima, under the direction of the board of directors of the said reading-room and library association.

SEC. 4. And be it further enacted, that the books belonging to the

Lima Union school district, and known as the "Ohio School Library," are hereby placed under the care and supervision of said Lima reading-room and library association.

SEC. 5. This act shall be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 7, 1878.

[House Bill No. 399.]

AN ACT

To establish a voting precinct in the townships of Hanover and Green, in the county of Ashland, Ohio, in which the incorporated village of Loudonville is the boundary of said asked for precinct, is situate therein, and all that portion of section thirty-five, and all of section thirty-six not now included in said corporate limits, shall be a part of said precinct, for election purposes only.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That all of that part of Hanover township lying within the corporate limits of the village of Loudonville, Ashland county, and that portion of Green township now included and composing a part of said village, together with the east half of section thirty-five, and of section thirty-six, be and the same is hereby made a separate voting precinct, to be called the election precinct of Loudonville.

SEC. 2. At all elections for state, county, and township, it shall be the duty of the trustees of each township to serve as judges at such elections, and the clerk of each of the above named townships shall serve at all elections so held; or the trustees shall appoint from Hanover township two judges and one clerk, and the trustees of Green township shall appoint one judge and one clerk, to serve at all elections in such townships; and separate ballot boxes shall be provided, and the ballots shall be deposited in the boxes separate, as though this was yet a part of the former townships; and separate poll books shall be kept by the judge's clerks, and returns made; if at township elections, to the judges and clerks at the center of said township; if state and county elections, they shall be returned, with their respective townships, the same as the law now provides; and if, in case of a failure to appoint such judges and clerks by said trustees, then the judges and clerks shall be chosen from the electors of such election precinct by *viva voce,* and all elections so held shall be conducted as the law provides.

SEC. 3. The judges and clerks appointed by the trustees, or chosen from the electors, shall be governed in making election returns as the law provides, and is now in force, and shall receive for their services one dollar and fifty cents per day.

SEC. 4. It shall be the duty of the township trustees to give lawful notice of all elections (state, county, and townships elections), municipal excepted, the same as if this was a part of the former townships for election purposes, and the place of opening the polls and receiving ballots.

SEC. 5. This act shall take effect and be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 9, 1878.

[Senate Bill No. 174.]

AN ACT

To enable the commissioners of Montgomery and Warren counties to purchase toll roads, and to convert the same into free roads.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the county commissioners of Montgomery and Warren counties, when in their opinion the interests of the citizens of said county require the same to be done, may, and they are hereby authorized and empowered to purchase any or all the toll roads, or parts of toll roads, within said county, as hereinafter provided.

SEC. 2. So soon as may be after the passage of this act, the said commissioners shall make an order to that effect on their journal, and thereupon they shall appoint three disinterested persons, residents within said county, who, after being duly qualified to faithfully discharge the duties required of them by law, shall, within ten days after their appointment, proceed to personally inspect and examine as to the net profits of each road, and appraise all the toll roads in said county, together with the bridges and culverts thereon; and within thirty days from the time of their appointment, said appraisers shall make and return in writing to said commissioners the valuation or present worth of each of said roads, including the bridges and culverts thereon, but deducting therefrom the value of any bridge or bridges built by said county, or of any subscription or contribution made by said county toward the construction of the same; said report shall separately state the value of each road-bed, less the right of way of said road-beds, and the separate value of the bridges and culverts thereon.

SEC. 3. Upon the filing of said report, if the appraised value of said roads shall be deemed reasonable, the commissioners shall submit to the owner or owners of said toll roads a proposition for the purchase of the same, at a price not exceeding such appraisal; and, if such proposition is accepted, the said commissioners shall thereupon purchase the same, and take conveyance thereof from such owner or owners; and to provide for the payment of said roads, and for the purpose of refunding assessments as hereafter provided, said commissioners are hereby authorized to issue the bonds of the county to such owner or owners at their par value, the payment of the same to be made in annual installments, and not to exceed five years, and to bear a rate of interest, payable annually, not to exceed seven per cent.; and thereupon said roads shall be declared free roads, to be kept in repair as hereinafter specified; and in any and all cases the commissioners of said county may reserve the right to reject the appraisement or award, should they deem the same excessive, and thereupon said commissioners may appoint another board of appraisers, who shall have the same power as the first board had.

SEC. 4. For the purpose of paying bonds named in this act, and interest thereon, and for keeping all free pikes in said county in repair, the county commissioners are authorized and empowered to annually levy upon the grand duplicate of the county an amount which, in their opinion, may be sufficient for the purpose, which sum shall be known as the "special pike tax," and shall be collected as other taxes. Said fund, when collected, shall be and remain under the control of the county commissioners: provided, however, that all persons, residents of said county, who have paid or shall pay any assessment for the construction of any road under said act of March 29, 1867, or the acts amendatory thereof or

supplementary thereto, or under any other laws to build free turnpikes and who are required to pay the tax levied for such purchase, or any part thereof, shall be entitled to have repaid to them out of any tax they are so required to pay for said purchase, the amount of said assessment so paid by them, which repayment shall in no instance exceed the amount of said tax they shall have so paid; and, for the purpose of adjusting this refunding of taxes, the auditor of said county shall prepare a book of all such assessments paid in the county, in which shall be noted all amounts so refunded, and in no instance shall a greater amount be refunded to any person than the assessment paid by him, and no tax shall be refunded but on the order of the auditor; and to further provide for keeping in repair said free roads, there shall be elected in each of the townships of said county wherein any of said free roads, or parts of the same may be situated, on the first Monday of April, 1879, and annually thereafter, one special pike commissioner, whose duty shall be to keep in repair all roads or parts of roads mentioned in this act. He shall do and perform his labor upon said roads, under the instruction of the county commissioners, and receive from them, from time to time, such portion of the special pike fund as they may deem proper, to be paid upon estimate and on the order of the county auditor. Said commissioner shall receive for his services two dollars per diem for each and every day he he may be actually employed on said road; but nothing in this act shall be so construed as to allow said pike commissioner buggy hire, or pay an emolument of any kind except said sum of two dollars, and only this amount when actually engaged upon said roads.

SEC. 5. Said appraisers shall receive three dollars per diem for each day actually employed, and no more.

SEC. 6. This act to take effect from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Passed May 10, 1878.

[House Bill No. 149.]

AN ACT

To authorize the board of trustees of the Cincinnati hospital, to establish a branch hospital for the accommodation of persons afflicted with contagious diseases.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the board of trustees of the Cincinnati hospital are hereby authorized and empowered, after thirty days' notice given in two Cincinnati daily newspapers, of general circulation in said city, of the time and place, to subdivide and sell, at public auction, on the premises, to the highest bidder or bidders, on such terms as to payment and security as it may prescribe in said notice, the real estate purchased by said board, by authority of an act of the legislature, passed April 13, 1863, to wit: four and thirty-one one-hundredths (4 31-100) acres of land, which real estate is particularly described in the deed to the city of Cincinnati, recorded in book No. 292, page 561, of the land records of Hamilton county, and to convey the same through the name of the city of Cincinnati, to

the purchaser, or purchasers, by deeds to be made by order of said board of trustees, and signed, sealed, and acknowledged by the president of said board, and countersigned by the secretary.

SEC. 2. That said board of trustees are hereby authorized and empowered to select and purchase a site suitable for a branch hospital, to be located in Hamilton county, and shall contain at least five acres of land, and said branch hospital shall be situated at least (200) two hundred feet from any other land, for the accommodation and treatment of persons afflicted with contagious diseases, within the city of Cincinnati, and to prepare plans and specifications for the construction of said branch hospital, and for such other improvements as they may deem necessary and, after twenty days' notice given for proposals to do said work, in two daily newspapers of general circulation in said city, to contract, in writing, with the lowest and best bidder for the completion of said branch hospital and improvements.

SEC. 3. That the proceeds arising from the sale of the real estate authorized by section one of this act to be sold, shall belong to the Cincinnati hospital, and be deposited with the city treasurer, and be a special fund, to be applied to the purchase of the site, and construction of the branch hospital, and improvement authorized by section two of this act; and to cover all costs of said site, and buildings, and improvements remaining unprovided for after the application of the proceeds arising from the sale of said real estate, said trustees are authorized to certify to the auditor of Hamilton county, on or before the first Monday of June, in the year 1878, a tax levy, not exceeding ($\frac{1}{3}$) one-third of a mill on the dollar valuation upon the grand duplicate of all taxable property in said city of Cincinnati, for the year 1878 only, and said auditor shall place the same on the tax duplicate of said county, the receipts whereof shall be paid into the city treasury as a special fund for the payment of the expenses incurred under this act; and the city treasurer shall disburse the same on the order of the board of trustees, signed by the president, and countersigned by the secretary of said board; and said branch hospital, and grounds, shall be under the government and control of the board of trustees of the Cincinnati hospital, and subject to such rules and regulations as they may adopt.

SEC. 4. In anticipation of the receipts from the proceeds of the sale of said real estate, and from said levy, said trustees are authorized to issue hospital bonds, to be issued by order of said board, and signed by the president, and countersigned by the secretary, to be redeemed within two years, and bearing no greater interest than seven per centum per annum, which shall not be sold for less than par value, and the amount of said bonds shall not exceed the sum of said proceeds and levy.

SEC. 5. Said site and improvements shall not exceed in cost the proceeds arising from said sales and the levy hereby authorized. The cost of said branch hospital, including the work and materials for its complete construction, and not including the site, shall not exceed the sum of sixty thousand dollars. The board of county commissioners of Hamilton county are hereby authorized to convey to the city of Cincinnati, to be used for a site for said branch hospital, any real estate owned by said county which may be suitable for said purpose, for such consideration as may be agreed upon between said board of county commissioners and said trustees, which money shall be deposited in the general fund of said county. All moneys arising from said levy and said sales, in excess

of the cost of said branch hospital and site, shall be deposited in the city treasury and used toward payment of the present debt of said hospital: providing, nevertheless, that the funds arising from said levy and sales may be used to construct an addition to the Cincinnati hospital for the accommodation of persons afflicted with contagious diseases, instead of using the same for the purchase of land for a site and construction of said branch hospital.

SEC. 6. This act shall take effect and be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 10, 1878.

[House Bill No. 445.]

AN ACT

To authorize the council of the incorporated village of Clyde to issue bonds to purchase steam fire engine and fire apparatus.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That the council of the incorporated village of Clyde, Sandusky, county, Ohio, be and the same is hereby authorized to issue the bonds of said village in any sum not exceeding five thousand dollars ($5,000), bearing interest not exceeding seven per cent. per annum from date of issue, for the purpose of paying for the purchase of a steam fire engine and fire apparatus for the use of said village.

SEC. 2. Said bonds shall be issued in such amounts respectively, as will, in the judgment of said council, best subserve the negotiation and sale of the same.

SEC. 3. The said council of said incorporated village is hereby authorized to levy a tax, in accordance with law, upon the taxable property and real estate of said village, to be certified to the auditor of the county of Sandusky, and to be collected as other taxes for village purposes.

SEC. 4. Said bonds shall not be sold for less than par value.

SEC. 5. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 11, 1878.

[Senate Bill No. 117.]

AN ACT

To authorize the Commissioners of Lucas county to borrow an amount of money upon the bonds of said county not exceeding the sum of fifty thousand dollars.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That he commissioners of Lucas county, Ohio, be and they are hereby authorized to issue the bonds of said Lucas county, not to exceed in amount the

sum of fifty thousand dollars, bearing a rate of interest not to exceed seven (7) per cent. per annum, the interest payable semi-annually, and to dispose of the same, from time to time, at not less than their par value, and the same shall be payable in from five (5) to ten (10) years from the date thereof, but the same shall be redeemable in whole or in part, at the pleasure of the county commissioners of said county at any time after five years from their respective dates, upon giving six (6) months' notice of their intention to redeem the same, in two newspapers published in the city of Toledo, Ohio; said bonds may be issued in sums of five hundred dollars or its multiple, and at such times, and in such amounts as may be necessary to meet and discharge the liabilities and expenses of said county, and the same shall be signed by said commissioners and countersigned by the auditor of said county.

SEC. 2. That for the redemption of said bonds, the county commissioners of said county are hereby authorized to levy taxes on all the taxable property in Lucas county for such years, and in such amounts as they shall deem necessary to meet and pay the interest and principal of such bonds as the same may become due and payable, or become redeemable as aforesaid.

SEC. 3. That upon the sale of said bonds, the county commissioners and county auditor are hereby authorized to apportion the proceeds thereof to the several funds, as may be required by the necessities of said county.

SEC. 4. This act shall take effect from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 11, 1878.

[House Bill No. 485.]

AN ACT

To authorize the trustees of Miami township, Hamilton county, to transfer certain funds therein named.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That the trustees of Miami township, Hamilton county, state of Ohio, be and they are hereby authorized to transfer, permanently, one thousand one hundred dollars ($1,100) of the poor fund to the contingent fund of said township.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 11, 1878.

[House Bill No. 354.]

AN ACT

To create a special school district in Sycamore township, Hamilton county, Ohio.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the territory comprised in sub district number four (4), in Sycamore township, Hamilton county, Ohio, be and is hereby created and declared a special school district, to be known as Runyon special school district: provided, however, that a majority of the electors residing within said territory shall vote in favor of said special school district, at an election to be held in the manner following:

SEC. 2. That written notices shall be posted in three of the most public places in said territory, signed by at least six resident electors of said territory, requesting the qualified electors thereof to assemble on a day, at an hour and place designated in said notices, then and there to vote for or against the creation of said special school district. The electors assembled at the time and place designated in said notices shall appoint a chairman and two clerks who shall be judges of said election, which shall continue for at least four hours, and shall not close before five o'clock p. m. The electors in favor of said special school district shall have written or printed upon their ballots, "Special School District—Yes," and those opposed thereto, "Special School District—No," and a majority of the ballots so cast shall determine the question whether or not the said proposed special school district shall be created.

SEC. 3. That should a majority of the ballots so cast at said election be found to favor the special school district, as aforesaid, the directors now in office in said sub district shall be the members of the board of education of said special school district, each of said members to serve till the expiration of the time for which he was elected director as aforesaid; and at each annual election after the passage of this act, there shall be elected one member of said board of education, who shall hold his office for three years, or until his successor is elected and qualified.

SEC. 4. That the said special school district shall be entitled to all the school property within said territory, and the title thereto is hereby vested in the board of education of said special school district; and the said special school district shall receive the same amount of school funds either now collected or now levied, to be collected within the current school year as the said special school district would be entitled to if it had continued to exist as said sub district.

SEC. 5. That said special school district shall be governed by such laws as are now or hereafter may be in force relating to special school districts.

SEC. 6. That this act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 11, 1878.

[House Bill No. 514.]

AN ACT

To create a village school district in Anderson township, Hamilton county, Ohio.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That all the territory within sub-district No. 14, in Anderson township, Hamilton county, Ohio, be and the same is hereby created and established a village school district, to be known as the California village school district.

SEC. 2. That written notices shall be posted for six days in three of the most public places in said district, signed by at least three electors of the same, notifying the qualified electors of said village school district, to assemble on a day and at an hour and place designated in said notices to elect six members of the board of education of said village school district. At such meeting the electors so assembled shall proceed to elect six members of the board of education for said village school district, two for one year, two for two years, and two for three years, from the third Monday of April, 1878, who shall hold their offices for the term specified, and until their successors are elected and qualified.

SEC. 3. That the said village school district shall be entitled to all the school property within said territory, and the title thereto is hereby vested in the board of education of said village school district; and the said village school district shall be entitled to and receive the proceeds of all taxes levied and collected within said territory for school purposes and not expended at the time of the passage of this act, and its distributive share of all other funds arising from taxation or otherwise, and which are levied or created for school purposes.

SEC. 4. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 13, 1878.

[House Bill No. 381.]

AN ACT

To authorize the board of school directors of the special school district, Jefferson township, Guernsey county, Ohio, to levy an additional tax.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That the directors of the special school district, in Jefferson township, Guernsey county, Ohio, be and they are hereby authorized to levy a tax, in addition to the amount they are now authorized to levy for other purposes, upon all the taxable property of said special school district, not to exceed six mills on the dollar, for the purpose of paying the indebtedness of said special school district. The auditor of Guernsey county is hereby required to place the levy so made upon the tax duplicate, and the treasu-

rer shall collect the same as other taxes. The money so levied and collected shall be used only for the purpose mentioned in this act.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 13, 1878.

[House Bill No. 420.]

AN ACT

Authorizing the trustees of cemeteries of the village of Kenton, Hardin county, Ohio, to remove dead bodies from the cemetery in said village.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the trustees of cemeteries of the village of Kenton, Hardin county, Ohio, be and they are hereby authorized, under and in accordance with such ordinances as may be passed by the council of said village, to remove the dead bodies from the cemetery known as the "old grave-yard," on East Franklin street, in said village, to the new cemetery, located to the east of said village, and owned by said village: provided, that no expense shall be incurred beyond the amount realized by the sale of said county lands by the council of said village in removing the bodies from said cemetery, unless the question of such expenditure and tax therefor be first submitted to the qualified electors thereof at some general election.

SEC. 2. The said cemetery trustees, before proceeding to remove said dead bodies, shall give written notice of at least thirty days to the parties in interest, so far as the same may be known, to remove the bodies of their friends to said new cemetery; and in case of the refusal or neglect of said parties to remove said bodies, the said trustees of cemeteries are hereby authorized and required to remove the same, with all monuments and tombstones, to said new cemetery.

SEC. 3. The said trustees of cemeteries and the county commissioners shall, after said "old grave-yard" shall be vacated, and the bodies, monuments, and all tombstones removed therefrom, sell such grave-yard, and the proceeds shall be placed in the treasury of said village to pay the expenses of such removal and improve the new cemetery.

SEC. 4. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 13, 1878.

[House Bill No. 396.]

AN ACT

To amend section six of an act entitled "an act to provide for the straightening, clearing out, widening, deepening, and otherwise improving certain ditches, drains, and water-courses in Wood county, Ohio," passed April 11, 1876. (O. L., v. 73, p. 303.)

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That section six (6) of the above recited act be and is hereby amended so as to read as follows:

Section 6. That for the purpose of raising the money necessary to

meet the expense of said improvement, the commissioners of the county are hereby authorized to issue the bonds of the county, payable in installments, or at intervals not exceeding in all the period of ten years, bearing interest at a rate not exceeding seven per cent. per annum, payable semi-annually, which shall not be sold for less than their par value; and the said assessment shall be divided in such manner as to meet the payment of principal and interest of said bonds, and so placed upon the special tax duplicate against the lands assessed, and be collected in the manner as other taxes are collected, and when collected, the money arising therefrom shall be applied to no other purpose than the payment of said bonds and interest: provided, that the money paid out of the county for the preliminary survey and other expenses, shall be first paid into the said treasury: and, provided further, that no bonds shall be delivered or money paid to any contractor, except upon estimate of work done, as the same progresses, or is completed, which estimate shall be made by the engineer of said improvement, and one or more of said county commissioners.

SEC. 2. That said section six (6) of the above recited act be and is hereby repealed.

SEC. 3. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 13, 1878.

[House Bill No. 179.]

AN ACT

To authorize the trustees of the Christian Benevolent Society of Munson township, Geauga county, Ohio, to sell certain land.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the trustees of the Christian Benevolent Society of Munson, so-called, or their successors or legal representatives, are hereby authorized to sell and convey the following tract or parcel of land, situate in Munson township, Geauga county, known as sub-lot number seven, and east part of sub-lot number six, in great lot thirty-four, tract three, containing about sixty-five-one-hundredths of an acre of land, and for a more full and perfect description of which, reference is had to Geauga county records, volume fifty, pages two hundred and fifty-six and two hundred and fifty-seven, and to appropriate the proceeds of such sale to the use of said township.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 13, 1878.

[House Bill No. 492.]

AN ACT

Amendatory to an act to authorize the commissioners of Hamilton and Clermont counties to build a bridge over the Little Miami river, passed April 7, 1876 (v. 73 O. L., p. 286), as amended March 30, 1877. (O. L., p. 424.)

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the first section of the act passed March 30, 1877, be amended as follows:

Section 1. That the commissioners of Hamilton and Clermont counties are hereby authorized and directed to build two bridges over the Little Miami river, one at Miamiville, below the railroad bridge, the other between the Cedar Creek run and the old Germany mill-dam, at a cost not exceeding twelve thousand five hundred dollars each, one-fourth of the cost thereof to be paid by Clermont county and the remainder to be paid by Hamilton county, by contracts entered into in accordance with laws for advertising for bids and letting contracts to build bridges.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 13, 1878.

[House Bill No. 513.]

AN ACT

To authorize the commissioners of Tuscarawas county to make additional levy for county purposes.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the commissioners of Tuscarawas county be and they are hereby authorized to levy, for county purposes, four-tenths (4-10) of one mill, in addition to the amount now allowed by law, on each dollar valuation of the taxable property of said county, for the years 1878 and 1879.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 13, 1878.

[Substitute for House Bill No. 439.]

AN ACT

To create a sub-school district in Madison township, Clarke county, Ohio.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That so much of the South Charleston school district, in Madison township, Clarke county, Ohio, as lies south of the Little Miami river and west of

the point where the west lines of David V. Pringle and Hendall P. Truitt touch the said river; thence following down said stream to a point where the Jamestown road crosses said Little Miami river, and running thence south along said Jamestown road to the survey line corner of survey No. 8,645; thence in a westerly direction on south line of said survey to the west line of said South Charleston school district, be and the same is hereby created a sub-school district, subject to the control and management of the board of education of said township.

SEC. 2. That it shall be the duty of the clerk of said township, within fifteen days after the passage of this act, to cause to be posted in at least five of the most public places within said sub-district, a notice in the usual form, notifying the voters of said sub-district of an election for the school directors, who shall hold their office as follows: one for one year, one for two years, and one for three years from the third Monday of April, 1878, and until their successors are elected and qualified in accordance with section twenty-seven of an act for the reorganization and maintenance of common schools, passed May 1, 1873.

SEC. 3. That the directors, elected as provided for in the second section of this act, shall meet within five days thereafter, at such place as may be most convenient in the sub-district, and organize as a board of school directors, as is provided in section twenty-eight of the act of May 1, 1873, entitled "an act for the reorganization and maintenance of common schools;" and after said board of directors have so organized, the sub-district, by this act created, shall be deemed and held as one of the sub-school districts of said township; and the director chosen as clerk of said sub-district, shall be a member of the board of education of said township; and as to the order in which the terms of office of said directors shall expire, shall be determined among themselves by lot.

SEC. 4. That for the purpose of purchasing a site and erecting a suitable school-house thereon in said sub-school district, there shall be levied in the year 1878, by the board of education of South Charleston school district, on all the taxable property of said South Charleston school district, including the part which is hereby created a sub school district, a sum sufficient to pay for said school-house so created; and that, for the maintenance of school in said sub-district, the treasurer of the board of education of said South Charleston school district, shall, after his annual settlement in September, 1878, with the county auditor of Clarke county, Ohio, pay over to the treasurer of the board of education of Madison township, such sum of money for all educational purposes, so that the funds so paid over shall be to the total amount of funds charged to the treasurer of said South Charleston school district, in the same proportion as the number of youth of school age in said South Charleston school district bear to the number of youth of school age in said sub-district herein created.

SEC. 5. This act shall take effect and be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 13, 1878.

[House Bill No. 540.]

AN ACT

For the relief of George N. Woodward.

WHEREAS, George N. Woodward was in the spring of A.D. 1877, appointed treasurer of the incorporated village of Georgetown, Brown county, Ohio, and was by law made custodian of the funds of said village, and deposited said funds with the banking house of F. J. Phillips & Co., at Georgetown, Ohio, for safe keeping and for the use of said incorporated village, and,

WHEREAS, said F. J. Phillips & Co. made an assignment for the benefit of their creditors, having in their possession at the time of such failure, four hundred and sixteen dollars and fifteen cents belonging to said incorporated village; therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the town council of the incorporated village of Georgetown, Brown county, Ohio, are hereby authorized and it is made their duty to notify the qualified electors of said incorporated village that they will be called upon to vote on the question of relief to George N. Woodward and sureties, at a special election, and that it is further provided that said town council of the incorporated village of Georgetown are hereby required to give at least fifteen days notice thereof preceding such election, by posting said notices in at least five public places in said incorporated village of Georgetown. The ballots at said election shall be voted in form as follows: "For relief to George N. Woodward and sureties—Yes," or "For relief to George N. Woodward and sureties—No," and if two thirds of the votes cast at said special election shall be for relief to George N. Woodward and sureties, Yes, the town council of said incorporated village shall if necessary levy a tax on the taxable property of said village for the amount lost by said deposit with F. J. Phillips & Co., and certify the same to the auditor of Brown county as other taxes.

SEC. 2. That in case said relief is voted to the said George N. Woodward and his sureties, it is provided that, before release shall be made, the said Geo. N. Woodward shall assign to the town council, for the use of the incorporated village of Georgetown, his claim against said F. J. Phillips & Co., for money by him deposited as aforesaid.

SEC. 3. This act shall take effect and be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 13, 1878.

[House Bill No. 449.]

AN ACT

To authorize the creation of a special school district in Canaan township, Morrow county.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the territory now embraced in sub-district number six, in Canaan township, in the county of Morrow, described as follows: south half of the

south-east quarter of section seventeen; thirty acres of the south-west quarter of the south-west quarter of section sixteen belonging to John Adams. The east half of section twenty, the south-west quarter of section twenty, the west half of the south-east quarter, and the west half of the north-east quarter of section twenty-one, the west half and the west half of the north-east quarter of section twenty-eight, five acres belonging to Nathan Betts, and eleven and one hundred and thirty-one one hundred and sixtieths acres owned by J. W. Thatcher, in the western part of the north-west quarter of section thirty-three, and the north-east quarter, and the east half of the north-west quarter, and the east three-fourths of the south-east quarter of section twenty-nine, be and the same is hereby created and declared to constitute a special school district by the name of Denmark special school district.

SEC. 2. On the third Monday of April, 1878, the electors of said special school district shall, at the school-house in said district, elect three members of the board of education, one for one year, one for two years, and one for three years, and till their successors, respectively, are elected and qualified; and annually thereafter, on the second Monday of April, they shall elect one of said members for the term of three years, and until his successor is elected and qualified.

SEC. 3. Said special school district shall be entitled to all the school property within the territory, and the title thereto is hereby vested in said board of education thereof; and it shall receive its full share of all school funds heretofore levied in said township according to the last enumeration of children in said township; which would have been appointed to sub-district number six (6) in said township had this special district not been established; and hereafter said special school district shall be governed by the laws now in force as to special school districts or that may hereafter be in force.

SEC. 4. This act shall take effect from its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 13, 1878.

[House Bill No. 544.]

AN ACT

To authorize the village of Minster, in the county of Auglaize, to issue bonds for the purpose therein named.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the council of the village of Minster, in the county of Auglaize, be and they are hereby authorized to issue bonds to an amount not exceeding in the aggregate six thousand dollars, payable in four years, in such sums as they may determine, bearing interest not exceeding seven per centum. payable annually, for the sole purpose of aiding in the establishment of machine shops in said village; which bonds shall not be disposed of for less than their par value, and which, or the proceeds of which, may be loaned to the party or parties agreeing to establish such machine shops;

and to secure the repayment of such loan, said council may take such undertaking and security as to the council shall be satisfactory.

SEC. 2. Before said council shall issue such bonds, the question as to their issue shall be submitted to the voters of said village at a special election, of which notice shall be given by the village clerk, in pursuance of a resolution of the council, by notices posted in three public places in said village, at least ten days before the day of election; which election shall be held as other village elections are held, and by the same judges; and the voters shall have on their ballots either, "Machine shop bonds—Yes," or "Machine shop bonds—No;" and returns shall be made to said council, which shall declare the result; and if a majority of the votes cast at such election are in the affirmative, the council may issue such bonds, but not otherwise.

SEC. 3. In case said bonds are issued, and it becomes necessary for the said village to pay the same, said council may and they are hereby authorized to levy a sufficient tax for that purpose, either in one year, or divided into several years.

SEC. 4. This act shall take effect from its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 13, 1878.

[House Bill No. 518.]

AN ACT

To authorize the city of Lancaster, Ohio, to issue bonds to purchase cemetery grounds.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the city council of the city of Lancaster, Ohio, are hereby authorized to issue the bonds of said city in an amount not to exceed the sum of nine thousand ($9,000) dollars, and to bear interest at the rate of six per cent. per annum, payable semi-annually, for the purpose of purchasing cemetery grounds for said city. Said bonds shall be payable $1,500.00 each year after their issue, and shall not be sold for less than their par value, and said bonds shall be signed by the mayor and clerk of said city.

SEC. 2. For the purpose of raising the money to pay said bonds, and the interest thereon as they mature, said council is hereby authorized to levy a tax sufficient to meet the same, in addition to the taxes now authorized by law.

SEC. 3. This act shall take effect from its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 13, 1878.

[House Bill No. 428.]

AN ACT

To authorize the commissioners of the counties of Butler, Warren, Montgomery and Preble to pay a local bounty.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the commissioners of the counties of Butler, Warren, Montgomery and Preble are hereby authorized to pay, from the general county funds of each of their respective counties, the sum of twenty-five dollars, in payment of local bounty due to Allen Miskimins, a veteran of company H, fortieth regiment of Ohio volunteers who was credited to the third congressional district of Ohio, in his reënlistment.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 13, 1878.

[House Bill No 504.]

AN ACT

To amend an act entitled "an act to authorize the city of Cleveland to fund certain railroad stocks," passed April 28, 1862. (Vol. 59, p. 126.)

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That section four of the above recited act be so amended as to read as follows:

Section 4. The said commissioners, by and with the consent of the city council first obtained, by resolution duly passed by a majority of the members elected to such council, shall have power and authority at any time to sell and dispose of any of said stocks, shares, and bonds for cash, and to invest the proceeds thereof in other stocks, or in such other manner as they shall consider to be for the interest of the city, and shall, when the aforesaid water works' debt shall become due, or any part thereof, sell such stocks, shares, and bonds, or such portion as may be necessary, for cash, and apply the proceeds thereof in payment of the water works debt, as contemplated by section one of this act; and so much of the said stocks, shares, and bonds as may not, in the judgment of the council, be needed to pay the principal of the said water works bonds as contemplated herein to be paid by said commissioners, shall, together with any surplus moneys in the hands of such commissioners, in like manner be disposed of, and the proceeds applied, from time to time, to the payment of the other general bonded indebtedness of the city, at such times and in such manner as the council by ordinance direct: provided, that no part of such funds shall be used for any other purpose than the payment of the bonded indebtedness of such city.

SEC. 2. This act shall be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 13, 1878.

[House Bill No. 503.]

AN ACT

To legalize certain bonds issued by the commissioners of Butler county, and to authorize the payment thereof.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That certain bonds, for the payment of money, heretofore issued by the commissioners of Butler county, but which were not issued in strict conformity to the act entitled "an act to authorize the commissioners of Butler county to borrow money on the bonds of the county, and to secure the payment of money due to it," passed April 12, 1870 (O. L., vol. 67, page 138), as amended April 23, 1872 (O. L., vol. 69, page 262), be and the same are hereby declared to have been legally issued, and the commissioners of Butler county are hereby authorized and empowered to pay the same: provided, that none of these bonds shall be paid until the auditor and county commissioners shall be fully satisfied that the bonds were issued, either as renewals for maturing bonds or that the purchase money for the same was duly paid into the hands of the auditor or treasurer of said county.

SEC. 2. The operation of the above section one (1) shall be restricted to the following bonds, to wit:

Bond No. 210, for $1,000.00.
Bond No. 217, for $1,000.00.
Bond No. 207, for $1,000 00.
Bond No. 218, for $1,000.00.
Bond No. 208, for $1,000.00.
Bond No. 243, for $1,000.00.
Bond No. 244, for $1,000.00.
Bond No. 164, for $1,000.00.
Bond No. 209, for $1,000.00.
Bond No. 221, for $1,000.00.
Bond No 255, for $1,000.00.
Bond No. 272, for $1,000.00.
Bond No. 270, for $500.00.
Bond No. 254, for $1,000.00.
Bond No. 171, for $1,300.00.
Bond No. 233, for $500 00.
Bond No. 175, for $500.00.
Bond No. 177, for $500 00.
Bond No. 173, for $500.00.
Bond No. 166, for $1,000.00.
Bond No. 167, for $1,000.00.
Bond No. 168, for $1,000.00.
Bond No. 169, for $1,000.00.
Bond No. 170, for $1,000.00.
Bond No. 202, for $1,000.00.
Bond No. 203, for $1,000.00.
Bond No. 204, for $2,000.00.
Bond No. 278, for $500.00.
Bond No. 165, for $1,200.00.
Bond No. 223, for $1,000 00.
Bond No. 245, for $1,000.00.
Bond No. 268, for $1,000.00.
Bond No. 248, for $1,000.00.

Bond No. 249, for $1,000 00.
Bond No. 269, for $500.00.
Bond No. 266, for $500.00.
Bond No. 265, for $500.00.
Bond No. 261, for $500.00.
Bond No. 262, for $500.00.
Bond No. 263, for $500.00.
Bond No. 256, for $1,000.00.
Bond No. 264, for $500 00.
Bond No. 271, for $400 00.
Bond No. 257, for $1,000.00.

SEC. 3. This act shall take effect and be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 13, 1878.

[Senate Bill No. 150.]

AN ACT

To amend section four of "an act regulating the Commercial Hospital of Cincinnati," passed March 11, 1861 (O. L., vol. 61, p. 142), and to repeal certain amendments thereto, passed January 26, 1875. (O. L., vol. 72, p. 172)

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That section four of an act regulating the commercial hospital of Cincinnati shall be so amended as to read as follows:

Section 4. That the board of trustees of the Cincinnati hospital are hereby authorized to levy a tax not exceeding forty-eight one hundredths of one mill on the dollar valuation on the grand duplicate, of all taxable property in said city of Cincinnati, in each and every year, and certify the same to the auditor of the city of Cincinnati on or before the first Monday of June annually; and the county auditor shall place the same on the tax duplicate of said county, the receipts whereof shall be paid into the city treasury as a special fund for the payment of all expenses incurred for building, rebuilding, furnishing, supplying, and supporting said hospital and grounds, and the city treasurer shall disburse the same on the order of the board of trustees, signed by the president and countersigned by the secretary of said board: provided, that the said trustees shall levy only the amount of taxes necessary for the purposes before mentioned, and the amount which the council of the city of Cincinnati is now authorized to levy shall be and is hereby reduced by the amount which the said trustees shall certify to the said auditor, as herein provided, and in no one year shall the amount so certified by the said trustees and the amount authorized to be levied by council exceed the amount which said council has a right by law to levy.

The board of trustees shall adopt rules and regulations for the government of said institution, and for the admission of patients and the discharge of convalescents from said hospital, and such branch hospitals as may be established by law.

SEC. 2. That the act entitled "an act to amend an act entitled an

act regulating the commercial hospital of Cincinnati," passed March 11, 1861 (vol. 58, pp. 151 and 152), and to repeal certain amendments thereto, passed February 29, 1864 (vol. 61, p. 142), passed January 26, 1875 (vol. 75, p. 197), be and the same is hereby repealed.

SEC. 3. This act shall take effect and be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 13, 1878.

[House Bill No. 438.]

AN ACT

To authorize the commissioners of Muskingum county to borrow money and build a county infirmary.

WHEREAS, The infirmary buildings of Muskingum county, Ohio, are old, decayed, and insecure; and

WHEREAS, the same have become injurious to the health and dangerous to the lives of the inmates thereof; and

WHEREAS, the immediate rebuilding and restoration of the same is a public necessity; therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That the commissioners of Muskingum county be and they are hereby authorized and empowered to build new county infirmary buildings, at such point on the lands now owned and occupied by said county for infirmary purposes as in their judgment may be deemed most for the public good, at a cost not to exceed $50,000.00.

SEC. 2. That the commissioners of said county, for the purpose of enabling them to build said infirmary buildings, be and they are hereby authorized to borrow such sum or sums of money as they shall deem necessary, at a rate of interest not to exceed six per cent. per annum, and issue the bonds of said county to secure the payment of the principal and interest thereon; such interest shall be paid semi-annually, at the county treasury, and the principal shall be paid in such sums and in such times, within five years from the date of said indebtedness, as said commissioners may determine, said bonds to be sold for not less than their par value.

SEC. 3. That the bonds so issued shall be signed by the commissioners, or any two of them, and countersigned by the auditor of said county, with or without coupons attached, in sums of not less than fifty nor more than one thousand dollars each, payable to the bearer, with interest as aforesaid, at such times, not exceeding seven years after date, as the commissioners may prescribe, and such bonds shall specify the object for which they were issued.

SEC. 4. The commissioners of said county shall, annually, at their June session, levy a tax upon the grand duplicate of said county, in addition to the levy authorized by section one of an act entitled "an act prescribing the rate of taxation for county, bridge, road, and township purposes, and to repeal certain acts therein named," passed April 19,

1877, sufficient in amount to pay the interest on such indebtedness, and at least one-seventh of the principal, which said taxes shall be collected as other taxes.

SEC. 5. This act shall take effect and be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 13, 1878.

[House Bill No. 526.]

AN ACT

For the relief of Joseph Stofer.

WHEREAS, Joseph Stofer was the duly elected and qualified treasurer on the third day of March, 1877, of Montgomery township, Ashland county, Ohio, and as such treasurer had on deposit in the Citizens' savings bank of Ashland, Ohio, the sum of $2,000.00, and secured by him as such treasurer, belonging to said township, and on said third day of March, 1877, the said Citizens' savings bank of Ashland failed, and its assets went into the hands of a receiver, and will not be able to pay but a small dividend upon its indebtedness, and the said Joseph Stofer is not able, without great trouble, to pay said loss of $2,000.00; whereas a large number of the tax payers of said township, by petition to the general assembly, represent that said Joseph Stofer acted with reasonable business prudence in making such deposit; that no safe had been provided for the safe-keeping of the funds of said township, and that the said Joseph Stofer was not in any manner at fault in making such deposit, and ask that this general assembly do extend [relief] to said Joseph Stofer; therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the trustees of Montgomery township, Ashland county, Ohio, are hereby authorized to release the said Joseph Stofer and his sureties on his official bond from all liabilities for the payment of said two thousand dollars, township school funds, deposited with the Citizens' savings bank of Ashland county, Ohio: provided, that before said release shall be made, said Joseph Stofer shall assign and transfer unto the trustees of said Montgomery township his certificate of deposit, book account, and entire claim held by him against said bank for said amount of two thousand dollars, the amount so deposited by him; and further, the trustees of said Montgomery township are hereby authorized and required to submit the question of releasing the said Joseph Stofer from his liability on his said bond to the qualified electors of said township, at a special election held in 1878, ten days' previous notice having been given of such submission by said trustees, by posting notices in three public places in different portions of said township; and if two-thirds of the electors voting at said election shall vote in favor of releasing the said Joseph Stofer on his official bond, as treasurer of said township, from the payment of said sum of two thousand dollars, then the said Joseph Stofer and his sureties shall not hereafter be held liable to make up said sum of money to said township.

SEC. 2. That the electors of said township voting at said election shall place on their ballots either the words "For release" or "Against release," and if two-thirds of all the electors voting at said election shall vote "for release," then the said Joseph Stofer and his sureties shall not be liable to make up said money to said township, and the trustees of said township are hereby authorized to levy and assess a tax on the taxable property of said township, not exceeding the said sum of two thousand dollars, to be applied to the same special fund or funds, and for the same purposes that said funds were to have been applied.

SEC. 3. This act shall take effect and be in force from and after its passage.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 13, 1878.

[Substitute for House Bill No. 511.]

AN ACT

To authorize the council of the village of West Cleveland to issue bonds and levy a tax for water-works purposes.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the council of the village of West Cleveland, Cuyahoga county, be and the same is hereby authorized to issue the bonds of said village, in any sum not exceeding the sum of five thousand dollars, bearing a rate of interest not exceeding seven per cent. per annum payable semi-annually, for the purpose of supplying such village with water. Such bonds shall be issued in such amounts and for such times not exceeding ten years respectively, as will, in the judgment of said council, best subserve the negotiation and sale of the same: provided, that such bonds shall not be sold for less than the par value of the same.

SEC. 2. Said council is hereby authorized to levy such amount of tax upon the taxable property of said village as may be necessary to pay the interest and principal of such bonds, when the same become due, said tax to be levied and collected in the same manner as taxes for general purposes are levied and collected: provided, that before such bonds are issued, or any indebtedness under this act incurred, the question of issuing such bonds shall be submitted to a vote of the qualified electors of such village, at a general or special election, as the council shall, by resolution direct, of which at least ten day's notice shall be given, by posting the same in at least ten public places in such village; such election shall be held by the same officers and conducted at the same place and in the same manner as elections for municipal officers. If a majority of votes cast upon such question shall be in the affirmative, said bonds may be issued; but if a majority of such are in the negative, such bonds shall not be issued.

SEC. 3. This act shall be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 14, 1878.

[Senate Bill No. 186.]

AN ACT

For the relief of W. J. Jacobs and sureties, of pleasant township, Brown county, Ohio.

WHEREAS, On the 15th day of November, A. D. 1877, the bank of F. J. Phillips & Co., in Georgetown, Brown county, Ohio, failed in a large sum; and,

WHEREAS, W. J. Jacobs, township treasurer of Pleasant township, in Brown county, Ohio, had, as such treasurer and as treasurer of the school funds of said township, on deposit in said bank, at the time of said failure, the funds of said township, to the amount of one hundred and sixty six dollars and seventy-one cents ($166.71), and the school funds of said township, to the amount of sixteen hundred and eighty dollars and nineteen cents ($1,680.19), said funds having been deposited in the said bank by the authority of the trustees of said township and the board of education of said township; therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That said W. J. Jacobs and his bondsmen, except F. J. Phillips, are hereby released from the payment and liability of said township and school funds: provided, at some special or general election held in said township, as the trustees thereof may determine, they shall submit the question to the qualified voters thereof, as to release of said treasurer and his bondsmen, except F. J. Phillips, from said payment and liability, after having given notice of said submission by publication of the same in each of the papers published in said township, for four consecutive weeks prior to said election, and that two-thirds of the voters of said township voting upon said question shall vote for the release of said treasurer and his bondsmen, except F. J. Phillips: and provided, further, that said W. J. Jacobs shall assign to the said trustees his claim against the bank of F. J. Phillips & Co., for or on account of the deposit of the township funds in said bank, and shall assign to the board of education of said township all his claims against the said bank and the parties and stock-holders thereof, for or on account of the deposit of the school funds aforesaid in said bank: provided, further, that nothing herein shall be held or construed to release F. J. Phillips for his liability for or on account of the loss of said funds so deposited.

SEC. 2. This act shall take effect from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 14, 1878.

[Senate Bill No. 179.]

AN ACT

For the relief of David Johnson.

WHEREAS, On the 3d day of March, A. D. 1878, in an action then pending in the supreme court of the state of Ohio, wherein the state of Ohio, on the relation of Davis Johnson, was plaintiff, and Valentine V. Persel, auditor of Paulding county, Ohio, was defendant, the said supreme court issued the writ of peremptory mandamus, commanding the said auditor

of said county to pay and cause to be paid to said Davis Johnson the sum of two hundred and ninety dollars ($290), the amount of a certain ditch receipt or certificate, out of the purchase money arising from the resale of the south half of the north-east quarter of section sixteen, township one, north of range three east, in Paulding county, Ohio; and,

WHEREAS, The notice of the application of said writ was served on the said auditor on the 11th day of April, 1874, the day of the resale of said lands, and before any part of the proceeds of said resale had been certified to the state treasury; and,

WHEREAS, By reason of changes in the office of auditor of said county, made after said notice was served, and said action was commenced, and before the issuing of said writ of peremptory mandamus, and while said action was so pending in the said supreme court, the whole amount of the said purchase money arising from the resale of said lands above described had been certified and paid into the state treasury; and,

WHEREAS, On the 3d day of April, 1878, the auditor of said county of Paulding, as commanded by said writ of peremptory mandamus, issued an order on the treasurer of said county of Paulding for the payment of said sum of two hundred and ninety dollars ($290), out of the said purchase money arising out of the resale of said lands; and,

WHEREAS, The treasurer of said county could not and did not pay the said order for the want of the said funds out of which to pay it, as the said funds had been long before then certified to, and paid into the treasury of the state of Ohio as aforesaid, where the same now is; therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That there be and is hereby appropriated out of any money in the state treasury belonging to the sinking fund, the sum of two hundred and ninety dollars for the payment of the claim of said Davis Johnson.

SEC. 2. That this act shall take effect and be in force from and after its passage.

JAMES E NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 14, 1878.

[House Bill No. 557.]

AN ACT

To provide for the disbursement of the school funds in the city of Mansfield.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the board of education of the city of Mansfield, Richland county, be and the same is hereby authorized to arrange with the county treasurer of said county, to disburse the school funds in said district, upon such terms as they may agree upon between them, and in case no such agreement can be made, then and in that case, the said school board of the city of Mansfield is hereby authorized to allow the treasurer of the said board a

reasonable compensation, not exceeding in amount what is now allowed by law to treasurers of other city school districts, to be paid out of any funds under their control for incidental purposes.

SEC. 2. This act shall take effect from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 14, 1878.

[House Bill No. 546.]

AN ACT

To allow the city council of Hamilton to enter into a contract for the furnishing of gas for the lighting of the streets, alleys, and public buildings and places therein.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the city council of Hamilton, Ohio, be and are hereby authorized and empowered to enter into a contract with good and suitable parties or corporations, for the furnishing of the streets, alleys, public buildings, and places of said city with gas, for a term of years, not exceeding five (5), from and after the expiration of the present contract for the furnishing of gas for the same.

SEC. 2. For the purpose of paying the contract price, to become due by the terms of said contract, said council of said city are hereby authorized to levy a tax upon all the taxable property of said city, but no levy shall be made in addition to the amount already allowed by law, every year during the continuance of said contract, sufficient in amount each year to pay the contract price that will become due during such year, and the money raised shall not be used for any other purpose.

SEC. 3. This act shall be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 14, 1878.

[House Bill No. 531.]

AN ACT

To authorize the commissioners of Hancock county to levy an additional tax.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the board of commissioners of Hancock county be and they are hereby authorized, in addition to the taxes now authorized to be levied, to levy a tax of not more than one mill on the dollar valuation for the year 1878, on the grand duplicate of said county, to pay the indebtedness of the county current expense fund of said county.

SEC. 2. This act shall be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 15, 1878.

[House Bill No. 556.]

AN ACT

To authorize the commissioners of Tuscarawas county to build one or more bridges within the corporate limits of the village of Port Washington in said county.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the commissioners of Tuscarawas county be and they are hereby authorized and empowered to build one or more turn draw, or lifting bridges, across the Ohio canal, within the corporate limits of the village of Port Washington in said county, at such height from water line, in such manner, and at such times as they, the said commissioners, may determine.

SEC. 2. That the trustees of Salem township, in said county, or the town council of the village of Port Washington, or both the trustees of the township and the council of the village aforesaid, be and they are hereby authorized to give a sufficient bond of indemnification to the state for any loss or damage to the state in consequence of the construction of said bridge or bridges, and that the board of public works shall accept and approve said bond.

SEC. 3. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 15, 1878.

[House Bill No. 558.]

AN ACT

To authorize the council of Medina to build an engine house and town hall.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio.* That the council of the incorporated village of Medina, in the county of Medina, Ohio, be, and it is hereby authorized to borrow a sum of money, not exceeding three thousand dollars ($3,000) in amount, for the purpose of purchasing grounds, and erecting thereon a building for an engine house and town hall, and the council of said village is hereby authorized to issue the bonds of said village for the money so borrowed, said bonds to bear interest at a rate not exceeding seven per cent. per annum, payable semi-annually, and said bonds shall be of such denominations, and shall mature at such times as the said council shall determine: provided, that the said council shall submit to the qualified voters of the village of Medina the question of borrowing the said money and issuing bonds therefor at some general or special election, and of the question to be submitted, in the newspapers of said village, by publication of said notice for not less than two weeks, and if at such election a majority of the votes cast upon

the question of issuing of said bonds and borrowing the said sum of money shall be in favor thereof, then, and not otherwise, the said council of the incorporated village of Medina shall borrow the said money and issue said bonds.

SEC. 2. This act shall take effect and be in force from and after its passage.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 15, 1878.

JOINT RESOLUTIONS.

[House Joint Resolution No. 13.]

JOINT RESOLUTION

Directing the superintendent of the Columbus hospital for the insane to receive Clark Tucker as a patient into said hospital.

WHEREAS, Clark Tucker, a resident of Morrow county, is now insane, but cannot be admitted into the hospital for the insane in this state, for the reason that his insanity occurred while he was a resident of the state of New York; and,

WHEREAS, His parents and brother removed with said Clark Tucker into this state about eleven years ago, and have resided here ever since, taking care of said insane person themselves.

Resolved by the General Assembly of the State of Ohio, That the superintendent for the Columbus hospital for the insane be hereby authorized and directed to admit said Clark Tucker into said hospital upon the usual proceedings being previously had as required by law for the admission of patients.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Adopted January 22, 1878.

[House Joint Resolution No. 2.]

JOINT RESOLUTION

Declaring United States bonds payable, principal and interest, in silver, at the option of the government, and instructing our senators and representatives in congress to support the Bland silver bill without any amendments limiting free coinage.

WHEREAS, Congress passed an act commonly known as an act to strengthen the public credit, approved March 18, 1869, changing about $1,600,000,000 of five-twenty bonds from a greenback to a coin bond, which at said time included both the precious metals, gold and silver; and,

WHEREAS, The said congress in 1873, by an act, stopped the coinage of the silver dollar, and in 1874, in revising the United States statutes, demonetized silver, thereby endeavoring to make the national debt payable in gold, thus taking from the tax-payers of this country many hundred millions of dollars for the benefit of bondholders and capitalists of this and foreign countries; therefore,

Be it resolved by the General Assembly of the State of Ohio, That in the opinion of this general assembly, all the bonds issued by the United States government are payable, principal and interest, at the option of the United States government in silver coins of the coinage of the legal standard of the United States, as it stood in 1870, and that to restore to its coinage such silver coins as a legal tender in payment of said bonds, principal and interest, is not in violation of the public faith, nor infringing on the rights of the public creditor.

Resolved, That common honesty, true financial wisdom, and justice to the tax-payers of this country, demand the immediate restoration of the silver dollar to its former rank, as a legal tender for all debts, public and private.

Resolved, That President Hayes and Secretary John Sherman in their opposition to the restoration of the silver dollar, do not represent the views nor wishes of the people of the state of Ohio on this vital issue, as is shown by the passage of a resolution by the sixty-second general assembly of Ohio, in its regular session of 1877, asking congress to restore the said silver dollar, with only three negative votes in the house of representatives, and but one in the senate, and the passage of a bill by the house of representatives of Ohio, at the same session, making silver coin a legal tender for all debts and demands throughout the state of Ohio, in conformity to the universal voice of the people of Ohio, irrespective of party.

Resolved, That we approve of the Bland silver bill passed by the lower house of congress, and that our senators in congress be and they are hereby instructed, and our representatives requested, to support said bill without any amendments limiting free coinage.

Resolved, That the governor be requested to transmit forthwith a copy of these resolutions to each of our senators and representatives in congress.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Adopted January 24, 1878.

[Senate Joint Resolution No. 1.]

JOINT RESOLUTION

Providing for the appointment of a joint committee to wait upon the governor.

Resolved by the General Assembly of the State of Ohio, That a committee of two on the part of the senate and three on the part of the house be appointed to wait upon the governor and inform him that the general assembly is now in session, and ready to receive any communication he may have to transmit.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Adopted January 24, 1878.

[Senate Joint Resolution No. 2.]

JOINT RESOLUTION

Providing for counting the votes cast for state officers.

Resolved by the General Assembly of the State of Ohio, That the two houses of this general assembly meet in joint convention in the hall of the house of representatives, on Wednesday, January 9, at 11 o'clock A.M., to count the votes cast for state officers at the election held on the 2d Tuesday of October (last), 1877.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Adopted January 24, 1878.

[Senate Joint Resolution No. 3.]

JOINT RESOLUTION

Providing for the appointment of a select joint committee to make arrangements for the inauguration of the governor elect.

Resolved by the General Assembly of the State of Ohio, That a committee of three on the part of the senate and five on the part of the house be appointed to make such arrangements as may be necessary for the inauguration of the governor elect on Monday next, the fourteenth instant.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Adopted January 24, 1878.

[Senate Joint Resolution No. 4.]

JOINT RESOLUTION

Instructing the supervisor of public printing to print copies of the joint rules and rules of both houses.

Resolved by the General Assembly of the State of Ohio, That the supervisor of public printing be and he is hereby directed to have printed and bound in brochure, in one volume, fifteen hundred copies of the joint rules, rules of the senate, and rules of the house, together with the standing committees of the respective houses, and a list of the officers and members of each house, with their county, post-office, and occupation, and that three hundred copies be deposited with the secretary of state for the use of the 63d general assembly in 1879, that three hundred be deposited in the state library for the use of the 64th general assembly, and that the remainder be distributed equally among the members and officers of the two houses at this session.

Resolved, That it shall be the duty of the clerks of the senate and house to provide copy, together with an index, to be printed and bound with the same.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Adopted January 24, 1878.

[Senate Joint Resolution No. 6.]

JOINT RESOLUTION

Providing for a joint convention of the two houses, relative to the election of a United States senator.

Resolved by the General Assembly of the State of Ohio, That the members of the two houses of this general assembly convene in joint assembly in the hall of the house of representatives, on Wednesday, January 16th, A.D 1878, at twelve o'clock M., for the purpose of such action as may be necessary, relative to the election of a United States senator.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Adopted January 24, 1878.

[House Joint Resolution No. 16.]

JOINT RESOLUTION

Providing for the appointment of a joint committee to adopt a plan for disposing of such work of the codifying commission as may be ready to bring before the General Assembly.

Be it resolved by the General Assembly of the State of Ohio, That a committee of five on the part of the house, and three on the part of the senate, be appointed, with instructions to report at as early a day as possible, such plan as may be deemed most feasible, in disposing of such part of the work of the codifying commission as may be ready for the consideration of this assembly.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Adopted February 1, 1878.

[House Joint Resolution No. 10.]

JOINT RESOLUTION

Providing for the printing and binding of additional copies of the Secretary of State's report, for distribution among the members.

Resolved by the General Assembly of the State of Ohio, That there be printed and bound in muslin, in the usual manner, sixteen thousand copies of the secretary of state's report for the year 1877, for the use of

nd to be equally distributed to the members of the present general ssembly. To determine what number of such reports are to be printed n German, it shall be the duty of the secretary of state to ascertain rom each member of this general assembly what number of the copies he s entitled to receive, he wishes in the German language. The aggregate umber so determined shall be the number authorized to be printed in erman, and they shall be distributed accordingly, and in the manner hat each member may indicate to the secretary of state: provided, that n the printing of the copies herein provided for, there shall be no harge for composition.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Adopted February 1, 1878.

[House Joint Resolution No. 21.]

JOINT RESOLUTION

uthorizing the committee raised by S. J. R. No. 10, to employ a phonographic reporter.

Resolved by the General Assembly of the State of Ohio, That the select joint ommittee authorized to be raised by senate joint resolution No 10, be nd the same is hereby authorized to employ a phonographic reporter, to ake down the testimony of witnesses before said committee, at a com- ensation not exceeding two dollars and fifty cents per day, for each day ctually employed in the service of said committee.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Adopted February 5, 1878.

[Senate Joint Resolution No. 8.]

JOINT RESOLUTION

roviding for constructing a direct passage between the two houses, and to fit up a committee room.

Resolved by the General Assembly of the State of Ohio, That the committee n state buildings of the senate, and the committee on public buildings ı the house, be and they are hereby required, without delay to lay out ıd give all directions for opening and constructing a direct passage be- veen the two houses, and to fit up the room now vacant between said ouses for a committee room for the senate, and that the adjutant-general ə and he is hereby ordered and directed to cause said room to be fitted p and said passage constructed in such manner as said committee may irect: provided, that the cost of construction shall not exceed eight undred dollars, including the furnishing of the room.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Adopted February 5, 1878.

[Senate Joint Resolution No. 11.]

JOINT RESOLUTION

Directing the distribution of the remaining copies of the report of the Ohio state board of centennial managers.

Resolved by the General Assembly of the State of Ohio, That the state librarian be and he is hereby authorized and directed to distribute the two thousand copies of the report of the Ohio state board of centennial managers, placed in his care by resolution of the last general assembly, as follows: Fifty copies to the "Historical and Philosophical Society of Ohio," at Cincinnati; one hundred and fifty copies to the Cincinnati Society of Natural History; one hundred copies to the "Western Reserve and Northern Ohio Historical Society," at Cleveland; two hundred copies to the Archæological Society of Ohio, at Columbus, and the remainder of said two thousand copies to be equally divided among the members of the general assembly.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Adopted February 5, 1878.

[Senate Joint Resolution No. 9.]

JOINT RESOLUTION

For the continuance of provision for youthful offenders, committed from the state at large to the Toledo house of refuge and correction.

WHEREAS, The city of Toledo has facilities and accommodations for keeping a much greater number of boys in the house of refuge and correction than its own need demands, and now has under its care and protection one hundred and fifty-two youthful offenders committed to that institution from the state at large, under contract made in pursuance of joint resolution of the general assembly of the state, passed April 8, 1876, and

WHEREAS, The facilities and accommodations of the Toledo institution, together with those of the reform farm, are still needed by the state, and to meet such need, and make provision for the number there committed, the city of Toledo has incurred a large expense.

Resolved by the General Assembly of the State of Ohio, That the attorney-general be and he is hereby authorized to contract with the city of Toledo through the board of directors of the house of refuge and correction of said city, for the keeping and maintenance of a number of boys under the age of sixteen years, who may hereafter be sentenced to, or are now subject to confinenent in such house of refuge and correction, under the laws of the state, not exceeding one hundred and fifty, and at a rate of compensation which shall be reasonable and equitable, not exceeding two dollars and one half per week for each boy there kept, to be paid by the state, subject to the future action of the general assembly: provided that all inmates, citizens of the city of Toledo, sentenced by the police court, shall be kept and supported by said city; and be it further

Resolved, That the instructions given, and authority conferred upon the attorney-general of the state and probate judge of Lucas county

r and by virtue of a proviso to the general appropriation act of 1877, r the heading of "For Toledo House of Refuge and Correction," h proviso terminates on February 1, 1878, an existing contract be- n the state and city of Toledo, be and the same are hereby revoked.

JAMES E NEAL.
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

lopted February 5, 1878.

[Senate Joint Resolution No. 5.]

JOINT RESOLUTION

e printing and distribution of 2,000 additional copies of the report of the adjutant-general.

olved by the General Assembly of the State of Ohio, That there be print- o thousand additional copies of the report of the adjutant-general ie year 1877, twelve hundred copies for the use of the adjutant- al, and four hundred for the use of the general assembly, and four red to be deposited in the library.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem of the Senate.

pted February 11, 1878.

[Senate Joint Resolution No. 12.]

JOINT RESOLUTION

Praying congress to equalize soldiers' bounties.

'ved by the General Assembly of the State of Ohio, That our senators gress be and they are hereby instructed, and our representatives be ey are hereby requested to favor the object of the following memo- id that the governor transmit to the president of the senate of the States, to the speaker of the house of representatives, and to our s and representatives copies of the same:

ie *Honorable, the Senate and House of Representatives of the United n Congress assembled*, Your memorialists, the legislature of the Ohio, respectfully ask leave to call your attention to the inequal- he bounties paid under existing laws to the soldiers of the late The soldiers who entered the service at the beginning of the war, ved for two years as enlisted men received one hundred dollars at e of their discharge, and by a subsequent act of congress an addi- one hundred dollars, but received no local bounties, while the who entered the service in the latter part of the war received a of one hundred dollars per annum, and a large local bounty in i thereto.

memorialists ask further leave to call your attention to the fact irge number of the soldiers who entered the service in the early

part of the war were discharged before the expiration of the two years, some on account of disease, and others for gallant and faithful conduct, to accept commissions, and for that reason received neither the original or additional bounty.

Justice and equality alike demand such further legislation as will extend the bounty of the government to all soldiers who served in the army for the preservation of the union, and who were honorably discharged, in proportion to the time they served, whether that time shall have been for three months or for a longer period.

Your memorialists, therefore, respectfully pray that an act equalizing bounties be passed at as early a day as possible.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Adopted February 11, 1878.

[House Joint Resolution No. 18.]

JOINT RESOLUTION

Authorizing the secretary of state to have copies of laws of the general assembly printed for distribution among the members.

Resolved by the General Assembly of the State of Ohio, That the secretary of state be authorized and directed to have the general laws of this session of the legislature printed as soon as possible after enactment, in forms of sixteen pages, and that he cause five thousand copies of the same to be distributed as follows: ten copies to each member of the general assembly, and the remainder he shall distribute to the county auditors of the several counties in this state in proportion to their representatives in the legislature, unless otherwise directed by senators or representatives from such counties; that the secretary of state be requested to have printed and bound the volumes of laws enacted at this session in advance of all other printing and binding for the state.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Adopted February 12, 1878.

[House Joint Resolution No. 17.]

JOINT RESOLUTION

Requiring the adjutant-general to prohibit the stabling of horses, etc., in the basement of the state house, and clean out said basement.

Be it resolved by the General Assembly of the State of Ohio, That the adjutant-general of the state be and he is hereby authorized and required to prevent and prohibit any and all persons from stabling, in the basement of the state house, any horses or other cattle, and to prohibit and prevent any horses or other cattle to occupy any space in said basement, at any

time; and the said adjutant-general is hereby authorized and empowered to cause said basement to be put in good condition, and to be thoroughly cleaned.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Adopted February 14, 1878.

[House Joint Resolution No. 24.]

JOINT RESOLUTION

Ordering the printing of the annual report of the commissioner of the bureau of statistics of labor.

Resolved by the General Assembly of the State of Ohio, That there be printed five thousand copies of the first annual report of the commissioner of the bureau of statistics of labor, to be distributed as follows: thirty-five hundred copies for the use of the general assembly, five hundred for the state library, and one thousand for the use of the commissioner.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Adopted February 14, 1878.

[House Joint Resolution No. 25.]

JOINT RESOLUTION

Providing for the admission of Mary E. Cole into the Columbus hospital for the insane.

WHEREAS, Mary E. Cole, late of Kansas, returned with her husband, Stephen Y. Cole, during the past year, to her former home in Walnut township, Pickaway county, Ohio, but has not yet regained a legal residence, and is now insane; therefore,

Resolved by the General Assembly of the State of Ohio, That the superintendent of the Columbus hospital for the insane be and is hereby authorized and requested to admit the said Mary E. Cole into said hospital, under the same rules and regulations as other inmates are admitted under existing laws.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Adopted February 14, 1878.

[Senate Joint Resolution No. 10.]

JOINT RESOLUTION

Providing for the appointment of a committee to investigate the official conduct of the directors of the Ohio state penitentiary.

WHEREAS, Rumors affecting the official conduct and integrity of one or more directors of the Ohio state penitentiary are being circulated; therefore, be it

Resolved by the General Assembly of the State of Ohio, That a select committee of two from the senate and three from the house be appointed to investigate said rumors, and report the result of their examination to the senate and house, and that said committee have power to subpœna witnesses, to call for any papers, and to administer oaths.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Adopted February 20, 1878.

[House Joint Resolution No. 29.]

JOINT RESOLUTION

Instructing the superintendent of the Athens hospital for the insane to receive into said hospital Michael M. Green.

Resolved by the General Assembly of the State of Ohio, That the superintendent of the Athens hospital for the insane is hereby directed to receive into said hospital Michael M. Green, now an inmate of the Dayton hospital for the insane, and the superintendent of the last named hospital is hereby directed to make the transfer.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Adopted February 27, 1878.

[House Joint Resolution No. 8.]

JOINT RESOLUTION

Requesting senators and representatives in congress to vote for a bill granting pensions to surviving soldiers and to widows of deceased soldiers of the Mexican war.

Be it resolved by the Senate and House of Representatives of the General Assembly of the State of Ohio, That the senators representing the state in the senate of the United States, be and they are hereby instructed and that the representatives in congress from Ohio, in the house of representatives, be and they are hereby requested to vote in favor of a bill to grant pensions to the surviving soldiers, and the widows of the de

ceased soldiers, who served in the army of the United States during the war against Mexico.

Resolved, That the governor be and hereby is requested to transmit a copy of these resolutions to the several senators and representatives in congress from Ohio.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Adopted February 27, 1878.

[Senate Joint Resolution No. 7.]

JOINT RESOLUTION

Authorizing the printing and distribution of agricultural reports, and authorizing the secretary of state to provide for the execution and supervision of state printing and binding.

Resolved by the General Assembly of the State of Ohio, That the secretary of state be authorized and required by law, under and in accordance with a law passed March 24, 1860, to provide for the execution and supervision of the state printing and binding, under the joint supervision of supervisor of state printing, and the secretary of state board of agriculture, to have printed and bound twenty thousand copies of the report of the state board of agriculture for the year 1877, and twenty thousand copies of the report for the year 1878; of which ten per cent. shall be printed in German, and the size of the type and mechanical execution to conform to the report of said board for the year 1876; three thousand copies of the report of 1877, and three thousand copies of the report of 1878, to be subject to the order of the state board of agriculture, for exchange and foreign distribution; sixteen thousand copies of the report of each of said years 1877 and 1878, the secretary of state shall apportion among the present members of the general assembly, the number of German copies for each member to be determined by list, to be furnished the said secretary of state by the committee on agriculture in such house, on which list shall be stated the names of members desiring German copies, and the number desired by each; said reports shall be boxed up and directed to the care of the county auditor in the county in which they respectively reside; and it shall be the duty of the said county auditor to notify the respective members within ten days after the receipt of said report, and if not removed by the person to whom directed, or on his written order, within thirty days, then the reports are to be delivered by the auditor to the secretary of the county agricultural society for distribution. The charge for the transportation of the said reports, as well as all the charges for boxes, shall be paid for in the same manner as is or may be provided by law for the distribution of the laws and journals: provided, that said copies shall be printed and delivered to the state binder not later than the fifteenth day of July, 1877, and 1878, respectively

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Adopted March 1, 1878.

[Senate Joint Resolution No. 16.]

JOINT RESOLUTION

Relative to providing better ventilation for the State House.

WHEREAS, The present method of ventilating the state capitol is by means of impure air drawn from the basement of the building, where is generated foul and noxious gases, thereby causing sickness of the occupants of the building; therefore,

Resolved by the General Assembly of the State of Ohio, That the senate committee on state buildings and the house committee on public buildings and lands, be and they are hereby appointed a joint committee for the purpose of employing competent and necessary labor, and causing to be constructed and put into place the necessary material and means for procuring pure air and properly ventilating the state-house building.

Resolved, That said committee be and they are hereby instructed to immediately carry out the purpose of the foregoing resolution: provided, that the total expense incurred for such improvement shall not exceed the sum of fourteen hundred dollars.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Adopted March 1, 1878.

[Senate Joint Resolution No. 25.]

JOINT RESOLUTION

Providing for the distribution of the report of the commissioner of railroads and telegraphs for the year 1876.

Be it resolved by the General Assembly of the State of Ohio, That five hundred copies of the report of the commissioner of railroads and telegraphs for the year 1876, now temporarily in the care of the secretary of state, be equally distributed among the members of this general assembly.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Adopted March 1, 1878.

[Senate Joint Resolution No. 21.]

JOINT RESOLUTION

Authorizing the printing of the papers and testimony before the penitentiary investigating committee.

Resolved by the General Assembly of the State of Ohio, That the testimony taken before the joint committee appointed under the senate joint resolution No. 10, and all papers before said committee, be printed.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Adopted March 1, 1878.

[Senate Joint Resolution No. 20.]

JOINT RESOLUTION

Relating to occupancy of the berme bank of the Miami canal by the narrow-gauge railroad company.

Resolved by the General Assembly of the State of Ohio, That the board of public works communicate to the general assembly by what authority, upon what terms, and for what length of time said board have contracted with the College Hill narrow-gauge railroad company for the use and occupancy by said railroad company of the berme bank of the Miami canal, from the six-mile stone to Twelfth street, in the city of Cincinnati, county of Hamilton, and state of Ohio.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Adopted March 1, 1878.

[Senate Joint Resolution No. 30.]

JOINT RESOLUTION

Authorizing a salute of thirty-eight guns in honor of the dollar of our fathers.

WHEREAS, The congress of the United States having passed a bill known as the Bland silver bill, whereby the dollar of the fathers is restored to its proper place as legal money of the United States;

WHEREAS, By this action the people of the whole nation have been and will be greatly benefited, and as there is cause for general rejoicing, therefore, be it

Resolved by the General Assembly of the State of Ohio, That the adjutant-general be and he is hereby instructed to fire a national salute of thirty-eight guns, at sunrise, March 4, 1878, in honor of the passage of said bill by the congress of the United States.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Adopted March 4, 1878.

[House Joint Resolution No. 4.]

JOINT RESOLUTION

Relating to the repeal of the "resumption act."

WHEREAS, Congress, on the 14th day of January, 1875, passed an act commonly known as the "resumption act;" and,

WHEREAS, The provisions of said act are in direct opposition to our industries, commerce, and public improvements generally, tending to centralization of capital at the expense of labor, and furnishing the means to capitalists to confiscate the property and labor of a majority of the people of this country; therefore, be it

Resolved by the General Assembly of the State of Ohio, That our senators in congress be and they are hereby instructed, and our representatives requested, to urge upon congress the necessity of its immediate repeal, and to use all honorable means to bring about, at the earliest practicable time, the repeal of said act.

Resolved, That the governor be requested to forward forthwith a copy of these resolutions to each of our senators and representatives in congress.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Adopted March 13, 1878.

[Senate Joint Resolution No. 36.]

JOINT RESOLUNION

Providing for the printing of two thousand extra copies of senate bill No. 141, by Mr. Jackson, of Perry.

Be it resolved by the General Assembly of the State of Ohio, That there be printed, for use and distribution by members of the general assembly, two thousand extra copies of senate bill No. 141, by Mr. Jackson, proposing a change in the judiciary system of the state.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Adopted March 18, 1878.

[House Joint Resolution No. 32.]

JOINT RESOLUTION

Authorizing the attorney-general to send for persons and papers in reference to the appropriation for new cells in the Ohio penitentiary.

WHEREAS, The general assembly of the state of Ohio has appropriated the sum of twenty-one thousand three hundred and seventy-nine dollars and seventy-six cents ($21,379.76) for new cells in the Ohio penitentiary, said sum not to be paid until the attorney-general shall decide that the amount is due under the contract, plans, and specifications; therefore,

Resolved by the General Assembly of the State of Ohio, That the attorney-general be and he is hereby authorized to subpœna witnesses, administer oaths to the same, and to send for persons and papers to enable him, from evidence, to decide the question thus submitted to him; and that the expenses for procuring such witnesses be paid upon his certificate in the same manner and out of the same funds appropriated for the payment of witnesses brought before committees of the general assembly.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Adopted March 21, 1878.

[House Joint Resolution No. 20.]

JOINT RESOLUTION

To authorize the adjutant-general to forward to the executive committee in the city of Marietta battle-flags, etc., for the reunion to be held September, A.D. 1878.

WHEREAS, The fifth annual national reunion of ex-soldiers and sailors, irrespective of party or section, will be held in the city of Marietta, in the month of September next, A.D. 1878;

WHEREAS, The veterans of Ohio have expressed a desire to have their old battle-flags displayed at said reunion, and to have artillery, tents, and camp equipage furnished by the state; therefore, be it

Resolved by the General Assembly of the State of Ohio, 1st, that the adjutant-general be and is hereby authorized to forward to the executive committee, when the executive committee gives notice to the adjutant-general the time and place of said national reunion; said battle-flags to be exhibited only under cover, and returned by said committee in good order immediately on the adjournment of said reunion. The adjutant-general is hereby further authorized and required, in like manner, at said time, to ship to said committee two pieces of artillery, three thousand muskets, cartridges, and five hundred mess kettles, tents, and camp equipage, provided the same are at the disposal of the state at said time, the same to be returned in good order, with the battle-flags, without any expense to the state of Ohio.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Adopted March 26, 1878.

[Senate Joint Resolution No. 38.]

JOINT RESOLUTION

Relating to the institution for education of deaf mutes.

WHEREAS, The accommodations now provided for the cure and education of deaf mutes of this state are entirely inadequate for the largely increasing number of such unfortunate youth; and,

WHEREAS, The present crowded condition of the institution for deaf mutes at Columbus is injurious to the health of the inmates and extremely dangerous in case of fire, and calculated to deter parents and guardians from sending their children and wards to such institution; and,

WHEREAS, In the opinion of many persons who have made the education of deaf mutes a special study there should be a classification of such unfortunate youth, as to age, to secure the best possible results; and,

WHEREAS, It is the duty of the state to give such unfortunate youth such training as will fit them for the active duties of life; and,

WHEREAS, It is impolitic and unwise that this state should take any backward steps in her grand scheme and system of public charities; and,

WHEREAS, The education of deaf mutes, and training and instructing them in useful occupations, is one of the most practical and promising, from results already attained, of the charities of this state, and should be maintained and enlarged to meet all demands likely to be made; therefore, be it

Resolved by the General Assembly of the State of Ohio, That a joint committee be appointed, consisting of three on the part of the senate and five on the part of the house of representatives, who are hereby authorized and directed to investigate the present condition of the institution for the education of deaf mutes, and what, if any, further accommodations are required, and if, in their judgment, additional room and facilities should be needed to accommodate increasing numbers or properly classify those already in charge of the state; to report their conclusions by bill or otherwise at the earliest practicable time to this general assembly; and to that end they are hereby instructed to investigate the present capacity of the institution at Columbus, and receive any proposals or donations that may be made to them for additional grounds and buildings.

Resolved, further, That the said committee be instructed to inquire and report how many, if any, pupils are in said institution in violation of law.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Adopted April 4, 1878.

[House Joint Resolution No. 39.]

JOINT RESOLUTION

To authorize the officers of the Athens insane asylum to receive Mrs. Enoch into said institution.

WHEREAS, Mrs. Albert F. Enoch, formerly a resident of the state of West Virginia, is now insane and confined in a private asylum for the insane at Philadelphia, Pennsylvania; and,

WHEREAS, Albert F. Enoch, husband of said Mrs. Enoch, is now a resident of Belpre, Washington county, purchasing real estate in said town, with the intention of becoming a citizen of the state of Ohio; and,

WHEREAS, The said Mrs. Enoch cannot be admitted into any of our asylums for the insane until her husband has resided in this state one year; therefore,

Resolved by the General Assembly of the State of Ohio, That the officers of the Athens insane asylum at Athens be and they are hereby authorized and directed to receive said Mrs. Enoch into said institution.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Adopted April 8, 1878.

[House Joint Resolution No. 40.]

JOINT RESOLUTION

To authorize the superintendent of the Athens insane asylum to admit George Selig into the institution as a patient.

WHEREAS, George Selig has resided in Athens county, and being a citizen thereof a great part of his life, and having left said county tem-

porarily, became sick, and in consequence thereof is now insane in the State of Pennsylvania, while his immediate relatives having care and charge of him are residents of Athens county; therefore, be it

Resolved by the General Assembly of the State of Ohio, That the superintendent of the Athens Hospital for the Insane be and is hereby authorized and required to admit George Selig into said hospital as a patient, under the regulations provided and authorized by law for the government of said hospital.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Adopted April 8, 1878.

[House Joint Resolution No. 36.]

JOINT RESOLUTION

To appoint a committee to examine and report to the general assembly as to public works.

Be it resolved by the General Assembly of the State of Ohio, That a committee of three on the part of the house, and two on the part of the senate, be appointed to examine and report to the general assembly, at its present session, whether any part of the public works of the state are used and occupied by any railroad company or companies doing business within this state, and if so, by what authority, if any, said works are so used and occupied, and to report what legislation, if any, is required upon the subject.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Adopted April 8, 1878.

[House Joint Resolution No. 34.]

JOINT RESOLUTION

Providing for the printing of the report of the fish commission.

Resolved by the General Assembly of the State of Ohio, That two thousand copies of the report of the fish commissioners of Ohio, for 1877, be printed in pamphlet form, five hundred copies for the use of the fish commissioners and the remainder to be distributed among the members of this general assembly.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Adopted April 9, 1878.

[Senate Joint Resolution No. 45.]

JOINT RESOLUTION

Relative to binding of secretary of state's report in muslin.

Resolved by the General Assembly of the State of Ohio, That the supervisor of public printing be and he is hereby directed to have all of secretary of state's report for 1877 bound in muslin.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Adopted April 11, 1878.

[Senate Joint Resolution No. 27.]

JOINT RESOLUTION

Authorizing the adjutant-general to loan battle-flags, artillery, muskets, and infantry accoutrements to the executive committee of the "soldiers' and sailors' society of Licking county," to be used at a reunion of ex-soldiers and sailors, to be held in the "ancient fort" at Newark, Ohio, on the 22d of July, 1878, the anniversary of the death of General McPherson.

Be it resolved by the General Assembly of the State of Ohio, That the adjutant-general be and he is hereby authorized to forward to the executive committee of the "soldiers' and sailors' society of Licking county," on or before the 19th day of July, 1878, all the battle-flags in his custody of regiments that will be represented at a reunion of ex-soldiers and sailors to be held under the auspices of said society at Newark, Ohio, said flags to be exhibited only under cover, and returned by said committee, in good order, immediately on the adjournment of said reunion; and the adjutant general is hereby further authorized, in like manner, at said time, to ship to said committee two pieces of artillery and five hundred muskets and infantry accoutrements complete: provided, the same are to be returned in good order with the battle-flags, without any expense to the state of Ohio.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Adopted April 12, 1878.

[Senate Joint Resolution No. 40.]

JOINT RESOLUTION

To authorize the adjutant-general to forward to the executive committee of ex-soldiers of Union county battle flags, etc., for a reunion of said soldiers to be held during 1878.

WHEREAS, The veterans of Union county, irrespective of party, have expressed a desire to have their old battle flags displayed at their reunion, and to have artillery, etc., furnished by the state; therefore,

Be it resolved by the General Assembly of the State of Ohio, That the adjutant-general be and is hereby authorized to forward to the executive committee, when the committee give notice to the adjutant-general of the time and place of said reunion, said battle flags of such regiments as shall be at said reunion, to be exhibited only under cover, and returned by said committee, in good order, immediately on the adjournment of said reunion. The adjutant-general is hereby further authorized and required in like manner, at said time, to ship said committee two pieces of artillery, three hundred stand of small arms, and one thousand rounds of blank cartridges: provided, the same are at the disposal of the state at the time; the pieces of artillery and small arms to be returned in good order with the battle flags, without any expense to the state of Ohio.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Adopted April 12, 1878.

[Senate Joint Resolution No. 31.]

JOINT RESOLUTION

Providing for the printing and distribution of the fifth volume of the final report of the geological corps of Ohio.

Resolved by the General Assembly of the State of Ohio, That there be printed of the fifth volume of the final report of the geological corps of Ohio (being volume three, geology) twenty thousand copies, with such maps, plates, and sections as are prepared to illustrate the report, the printing to be in the best style, on good paper, in royal octavo, and bound in muslin; two hundred and fifty copies for the geological corps, two hundred and fifty copies for the geological board, five hundred copies for the state library, and the remaining for the present general assembly, to be divided equally among the members thereof, and sent to them as soon as printed and bound. To determine what number of such reports are to be printed in German, it shall be the duty of the secretary of state to ascertain from each member of this general assembly, also from the geological corps, geological board, and state librarian, what number of reports they are entitled to receive they wish in the German language; the aggregate amount so determined shall be the number authorized to be printed in German, and they shall be distributed accordingly. That there shall be deposited in the township library in each county of the state of Ohio, one copy of this report, by the member representing the same in this general assembly at the time of their distributien.

Resolved, That the joint resolution relative to the printing and distribution thereof, adopted May 8, 1877, be and the same is hereby rescinded.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Adopted April 24, 1878.

[House Joint Resolution No. 28.]

JOINT RESOLUTION

Instructing the board of directors of the Ohio penitentiary to employ an architect to estimate the cost of certain repairs in said institution.

WHEREAS, The tin roof of the east wing of the main cell house of the Ohio penitentiary is in such a condition that it can not be repaired or longer used without serious injury to the building and the health of its inmates, and the executive part, or the warden's office, and that occupied by his family is in a similar condition, and requires immediate attention, and should not be longer delayed; therefore,

Resolved by the General Assembly of the State of Ohio, That the board of directors of the Ohio penitentiary be and it is hereby authorized and directed to forthwith employ an architect to make an estimate of the cost of a new self-supporting slate roof for said east wing and the executive part of the said Ohio penitentiary, and that said board of directors be requested to report such estimate to this assembly at the earliest day possible.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Adopted April 24, 1878.

[Senate Joint Resolution No. 15.]

JOINT RESOLUTION

Authorizing the printing of additional copies of the report made to the governor by Professor Tuttle on hog cholera.

Resolved by the General Assembly of the State of Ohio, That the supervisor of public printing be directed to have printed and distributed among the members of this general assembly ten thousand copies of the report on hog cholera, made to the governor of Ohio by Professor A. H. Tuttle, in addition to the number already printed.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Adopted April 24, 1878.

[Senate Joint Resolution No. 44.]

JOINT RESOLUTION

Directing the secretary of state to ship and distribute certain public documents.

Resolved by the General Assembly of the State of Ohio, That the secretary of state be and he is hereby directed to have boxed up the geological survey reports and the statistical reports of the secretary of state to which the members of the general assembly are entitled, and ship the same to the

address of the several members respectively; and the secretary of state is hereby directed to prepay the charges for shipping the same out of the amount appropriated for the distribution of the laws, journals, and public documents, and to take vouchers for the same.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Adopted April 24, 1878.

[Senate Joint Resolution No. 35.]

JOINT RESOLUTION

Directing the treasurer of state to correct a certain mistake made by the treasurer of Huron county.

WHEREAS, The treasurer of Huron county has paid into the state treasury all money received by him from permits for shows in said county since 1862, after deducting his fees, amounting to the sum of one thousand one hundred and thirty-five dollars and eighty-three cents; and

WHEREAS, One-half of said sum should have been retained by said treasurer for the school fund of said county, and was paid into the state treasury by mistake; therefore,

Be it resolved by the General Assembly of the State of Ohio, That the treasurer of state be and he is hereby directed to correct said mistake, by crediting the treasurer of said county with said sum of five hundred and sixty-seven dollars and ninety-one cents, which the treasurer of said county is hereby authorized to retain in his next settlement with the treasurer of state for the school fund of said county of Huron.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Adopted April 24, 1878.

[House Joint Resolution No. 23.]

JOINT RESOLUTION

In relation to contract for the keeping of insane in Lucas county insane asylum.

WHEREAS, By authority of a joint resolution of the general assembly of Ohio, adopted April 27, 1872, the attorney-general entered into a contract with the commissioners of Lucas county, for the maintenance and care of one hundred insane patients, from the state at large, at four dollars and eighty cents per week, which contract has remained in force from that time; therefore,

Resolved by the General Assembly of the State of Ohio, That the attorney-general be and is hereby authorized to contract with the commissioners of Lucas county, for the maintenance and care of a number of the curable insane of the state, not exceeding one hundred, at a rate not exceeding three dollars and fifty cents per week: provided, said insane cannot be accommodated in the hospitals for insane under state control, prefer-

ence being given to the insane of Lucas county, and the contract to be subject to the future action of the general assembly. The joint resolution providing for the filling of the Lucas county insane asylum with patients from the state at large, adopted April 27, 1872, be and the same is hereby repealed, and all contracts thereunder made are hereby terminated.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Adopted April 25, 1878.

[Substitute for Senate Joint Resolution No. 46.]

JOINT RESOLUTION

Relative to the adjournment of the 63d general assembly.

Be it resolved by the General Assembly of the State of Ohio, That a joint committee of two on the part of the senate and three on the part of the house, be appointed to consider and report when and to what time the present session of the general assembly, having due regard to the public interests, shall adjourn.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Adopted April 27, 1878.

[Substitute for Senate Joint Resolution No. 39.]

JOINT RESOLUTION

Providing for a committee to investigate the condition of the affairs of the trustees of the Cincinnati southern railway.

Be it resolved by the General Assembly of the State of Ohio, That the trustees of the sinking fund and the board of public works of the city of Cincinnati be and they are hereby directed to appoint a commission of three citizens of said city (who shall be tax-payers and electors of said city), to investigate into the condition of the affairs of the trustees of the Cincinnati southern railway, to examine into the management of their trust, the disbursement of the moneys intrusted to their care. That said commission when appointed shall be empowered to examine all books and papers belonging to said Cincinnati southern railway, to summons and examine witnesses under oath, to require the production of any other books and papers. They shall hold open sessions, and said commission shall have power to employ competent clerks to assist them in their investigation. That the said trustees of the sinking fund and the board of public works shall, within twenty days from the passage of this resolution, appoint said commission, and all the expenses attendant upon the examination hereinbefore provided for, shall be paid out of the city treasury of Cincinnati.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Adopted April 27, 1878.

[Senate Joint Resolution No. 51.]

JOINT RESOLUTION

Directing the superintendent of Dayton asylum to receive a certain person into said institution as an inmate.

Resolved by the General Assembly of the State of Ohio, That the superintendent of Dayton asylum for the insane be and is hereby directed to receive into said asylum Miss Amelia Pittinger, now a resident of Richland county, state of Ohio, and who has been declared insane, and whose insanity has been of less than two years' duration.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Adopted May 1, 1878.

[House Joint Resolution No 47.]

JOINT RESOLUTION

Authorizing the governor to execute a deed to John A. Mills, assignee of Peter Stoubs.

WHEREAS, It appears from evidence on file in the office of the auditor of state that on the fifth day of October, 1847, Peter Stoubs, of Darke county, Ohio, entered a tract of canal land, at the state land office, at Lima, the following being part and parcel of the land granted to the state by the general government, to aid in the construction of the canals authorized by law, viz.: The west one-half (½) of the south-east quarter (¼) of section thirty (30), township seven (7), range four (4), east, Darke county, Ohio, but received a certificate from the receiver, and a deed from the governor of Ohio, dated April 28, 1848, describing his said purchase as the west one-half (½) of the south-east quarter (¼) of section thirty (30), township seven (7), south, range four (4), east, (Mercer county, Ohio), which said last described tract of land was never the property of the state, but had been entered as congress land by Joseph Nieman, October 2, 1833; and,

WHEREAS, The said Peter Stoubs, in good faith, entered upon the said west half, south-east quarter, section thirty, township seven, range four, east, Darke county, and made valuable improvements and sold the same; therefore,

Resolved by the General Assembly of the State of Ohio, That the governor of Ohio is hereby directed to make a deed to John D. Mills, the legal representative of the said Peter Stoubs (now deceased), and the present owner of the land, for the said west one-half (½) of the south-east quarter (¼) of section thirty (30), township seven (7), range four (4), east, Darke county, Ohio: provided, however, that the said John D. Mills shall first make and deliver to the state of Ohio, duly recorded a quit claim deed to said second described premises.

JAMES E. NEAL,
Speaker of the House of Representatives.
JAMES W. OWENS,
President pro tem. of the Senate.

Adopted May 6, 1878.

[Substitute for Joint Resolution No. 1.]

JOINT RESOLUTION

Providing for adjournment.

Be it resolved by the General Assembly of the State of Ohio, That the sixty-third general assembly do adjourn on Monday, May 13, 1878, at 8:30 o'clock A.M., to meet again on Tuesday, January 7, 1879, at three o'clock P.M.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Adopted May 7, 1878.

[Senate Joint Resolution No. 50.]

JOINT RESOLUTION

Relating to the improvement of state lands in the city of Columbus.

WHEREAS, The state of Ohio is the owner of certain lots of ground in the city of Columbus, on Ohio and Champion avenues, Town street, and a street recently opened by the state on the east side of the asylum for the blind, and extending from Town to Friend street; and,

WHEREAS, The improvement of those streets are retarded by the fact that the state will not contribute to the improvement thereof; and,

WHEREAS, The improvement of the streets and avenues will enhance the value of the contiguous property and conduce to the public convenience; and,

WHEREAS, There are a number of convicts in the Ohio penitentiary who are unemployed, and who will likely remain idle for some time to come; therefore,

Be it resolved by the General Assembly of the State of Ohio, That the directors of the Ohio penitentiary be and they are hereby instructed to direct the warden of the penitentiary to employ so many of said convicts as may be necessary, and can be safely and profitably used for the purpose of improving said avenues and streets, by grading, macadamizing, curbing, and placing gutters therein, in all cases where the state owns the land abutting on both sides of such street; and in all cases where the state owns the land abutting on one side only of such street, that such improvement shall be made to the center only of such street, and upon the side thereof on which the land of the state so abuts, or as much of such improvement as they deem for the best interests of the state.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Adopted May 7, 1878.

[Senate Joint Resolution No. 53.]

JOINT RESOLUTION

Relative to the employment of certain convict labor.

Resolved by the General Assembly of the State of Ohio, That the warden of the penitentiary shall furnish to the superintendent of the Columbus asylum for the insane such prisoners (not otherwise employed) as, in his judgment, may with safety be entrusted to do labor outside the walls of the prison; also a suitable number of guards who shall have charge of such prisoners. Said prisoners shall be employed in grading and fencing the grounds of said asylum, under the direction of the superintendent. The penitentiary shall be paid at the rate of fifty cents per day for each prisoner so employed out of the grading and fencing fund for said asylum.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 7, 1878.

[Senate Joint Resolution No. 52.]

JOINT RESOLUTION

To appoint a joint committee to ascertain upon what terms Longview Asylum can be transferred to the State of Ohio.

Be it resolved by the General Assembly of the State of Ohio, That a committee of two on the part of the senate and three on the part of the house of representatives be appointed to confer with the commissioners of Hamilton county, and other proper boards and officers, to ascertain how, and upon what terms the Longview asylum for lunatics can be acquired by, or transferred to, the state of Ohio, to report at the next session of the general assembly.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Adopted May 7, 1878.

[House Joint Resolution No. 52.]

JOINT RESOLUTION

That the board of public works shall take immediate possession of the public works of the state.

Resolved by the General Assembly of the State of Ohio, That the board of public works be and are hereby authorized and required to take immediate possession of all the public works of the state, but the passage of this resolution shall not be construed to mean that the lessees shall be released from any damage that may be claimed by the state by reason

of the non-performance of their part of the contract lease, nor in any way as admitting the right of the lessees to abandon the public works and surrender the same to the state, and all rights of action which the state may now have against the lessees of the public works are hereby expressly reserved to the state.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Adopted May 11, 1878.

[House Joint Resolution No. 55.]

JOINT RESOLUTION

As to employing convict labor for the construction of certain building.

Resolved by the General Assembly of the State of Ohio, That the trustees of the Ohio state asylum for idiots are hereby authorized and required, if in their judgment economy, and the best interest of the state will be subserved thereby, to use all the convict labor they can make available in the construction of the additional building now authorized, such labor to be employed by them upon such terms, and under such restrictions as shall be agreed upon by said trustees and the directors of the penitentiary. The said trustees are given the discretion of varying their action under the present law regulating the construction of public buildings, so far, and only so far, as is necessary to enable them to carry out the provisions of this resolution.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Adopted May 11, 1878.

[Senate Joint Resolution No. 56.]

JOINT RESOLUTION

Praying that the berme bank of the feeder to the Miami and Erie canal, from Port Jefferson to Sidney, may be granted to the Columbus and North-western narrow gauge railway company for a road bed, under certain restrictions.

Be it resolved by the General Assembly of the State of Ohio, That the board of public works of the state be and they are hereby authorized, upon such terms, and for such compensation as said board shall deem just, to permit the Columbus and North-western narrow gauge railway company to use and occupy the berme bank of the feeder to the Miami and Erie canal, from the village of Port Jefferson to Sidney, in Shelby county; provided, however, that said railway company, before taking possession of said berme bank, shall enter into a contract with the state of Ohio, said contract to be prepared by the attorney-general, binding said company, their lessees, assigns or person or persons occupying the said berme bank to forever keep the same in good repair for canal pur-

poses; which repairs shall be made under the direction of the board of public works, and in case said company shall fail or refuse to repair said bank when requested by the board of public works, the right of said company to use or occupy said bank shall cease, and the state shall be entitled to immediate possession of the same.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 11, 1878.

[Senate Joint Resolution No. 49.]

JOINT RESOLUTION

To provide for the publication of the Ohio State Reports, and the advance sheets of the same.

Be it resolved by the General Assembly of the State of Ohio, That the secretary of state be and he is hereby authorized to contract with some responsible person or firm to furnish material, print, bind, and supply the state with three hundred and fifty copies of the thirtieth, and any other subsequent volume of the Ohio State Reports that may be ready for publication within two years from the 23d day of June, A.D. 1878, the decisions of the supreme court and supreme court commission to be arranged and reported in separate volumes, series of the state reports; said contract to be made in accordance with the provisions, and subject to the restrictions of section thirteen of an act entitled "an act relative to the appointment and duties of a reporter of the supreme court, and the preparation and distribution of the reports of said court, passed April 23, 1872," and shall include the advance sheets provided for in said section, with the decisions arranged as herein directed. The volume shall be, in paper and binding, equal to vol. 66 New York reports.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Adopted May 11, 1878.

[House Joint Resolution No. 53.]

JOINT RESOLUTION

To authorize the payment to James B. Monroe for work in the Soldiers' and Sailors' Orphans' Home.

WHEREAS, The general assembly on the 12th day of April, 1876, O. L. 73, p. 339, by joint resolution, directed the board of trustees of the Ohio soldiers' and sailors' orphans' home to investigate the claim of James B. Monroe for furnishing materials and painting the school building of said home, and report to the general assembly, whether, in their opinion, the same or any part thereof shall be paid by the state; and,

WHEREAS, Said board by resolution adopted March 20th, 1877, recom-

mended that said claim, amounting to the sum of $480.65, be paid by the state; and,

WHEREAS, Said claim has not been paid, and the application for the allowance of the same has not been made; now, therefore,

Resolved by the General Assembly of the State of Ohio, That the auditor of state, treasurer of state, and attorney-general, or a majority of them, be and they are hereby authorized and directed to investigate said claim and ascertain whether, in their judgment, the state should pay the same, and to report their conclusions in the premises to said board; and if they shall determine in favor of such payment, said board is hereby directed to audit and pay the amount designated in such report, not exceeding said sum of $480 65; provided any expenses incurred in such investigation shall be paid by said Monroe.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Adopted May 11, 1878.

[House Joint Resolution No. 46.]

JOINT RESOLUTION

Requiring the clerk of the senate and clerk of the house to prepare and mail a calendar of the unfinished work to each member of this general assembly.

Resolved that the clerk of the senate and the clerk of the house be required to prepare calendars of their respective houses for the first day of the adjourned session; said calendars to show the exact status of every bill pending in either house at the time of adjournment of the present session; said calendar to be prepared within thirty days from the date of adjournment of present session, and a copy of the same sent by mail to each senator and representative of this general assembly: provided, that no additional compensation shall be allowed.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 13, 1878.

[House Joint Resolution No. 57.]

JOINT RESOLUTION

As to rescinding joint resolution No. 1.

Resolved by the General Assembly of the State of Ohio, That joint resolution No. 1, providing for an adjournment from Monday, May 13th, 1878, at 8.30 P.M., to Tuesday, January 7th, 1879, at 3 o'clock P.M., be and the same is hereby rescinded.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Adopted May 13, 1878.

[House Joint Resolution No. 49.]

JOINT RESOLUTION

In relation to the publication of the metric system of weights and measures.

Resolved by the General Assembly of the State of Ohio, That for convenient reference, the secretary of state be and he is hereby directed to cause to be printed in the forthcoming volume of laws, sections thirty-five hundred and sixty nine (3569), and thirty five hundred and seventy (3570), of the revised statutes of the United States.

JAMES A. NORTON,
Speaker pro tem. of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 13, 1878.

SEC. 3569. It shall be lawful throughout the United States of America to employ the weights and measures of the metric system; and no contract or dealing, or pleading in any court, shall be deemed invalid or liable to objection because the weights or measures expressed or referred to therein are weights or measures of the metric system.

SEC. 3570. The tables in the schedule hereto annexed shall be recognized in the construction of contracts, and in all legal proceedings, as establishing, in terms of the weights and measures now in use in the United States, the equivalents of the weights and measures expressed therein in terms of the metric system; and the tables may lawfully be used for computing, determining, and expressing in customary weights and measures the weights and measures of the metric system.

MEASURES OF LENGTH.

Metric denominations and values.		Equivalents in denominations in use.
Myriameter	10,000 meters.	6.2137 miles.
Kilometer	1,000 "	0.62137 miles, or 3,280 feet and 10 inches.
Hectometer	100 "	328 feet and 1 inch.
Dekameter	10 "	393.7 inches.
Meter	1 meter.	39.37 inches.
Decimeter	1-10 of a meter.	3.937 inches.
Centimeter	1-100 "	0.3937 inches.
Millimeter	1-1000 "	0.0394 inches.

MEASURES OF CAPACITY.

Metric denominations and values.			Equivalents in denominations in use.	
Names.	No. of liters.	Cubic measure.	Dry measure.	Liquor or wine measure.
Kiloliter or stere	1,000	1 cubic meter	1.308 cubic yards	264.17 gallons.
Hectoliter	100	1-10 of a cubic meter	2 bushels and 3.35 pecks	26.417 gallons.
Dekaliter	10	10 cubic decimeters	9.08 quarts	2.6417 gallons.
Liter	1	1 cubic decimeter	0 908 quarts	1.0567 quarts.
Deciliter	1-10	1-10 of a cubic diameter	6.1022 cubic inches	0.845 gills.
Centiliter	1-100	10 cubic centimeters	0.6102 cubic inches	0.338 fluid ounces.
Milliliter	1-1000	1 cubic centimeter	0.061 cubic inches	0.27 fluid drams.

MEASURES OF SURFACE.

Metric denominations and values.	Equivalents in denominations in use.
Hectare ..... 10,000 square meters.	2.471 acres.
Are ..... 100 "	119.6 square yards.
Centare ..... 1 "	1,550 square inches.

WEIGHTS.

Metric denominations and values.			Equivalents in denominations in use.
Names.	Number of grams.	Weight of what quantity of water at maximum density.	Avoirdupois weight
Millier or tonneau	1,000,000	1 cubic meter	2204.6 pounds.
Quintal	100,000	1 hectoliter	220.46 "
Myriagram	10,000	10 liters	22.046 "
Kilogram or kilo	1,000	1 liter	2.2046 "
Hectogram	100	1 decliter	3.5274 ounces.
Dekagram	10	10 cubic centimeters	0.3527 "
Gram	1	1 cubic centimeter	15.432 grains.
Decigram	1-10	1-10 of a cubic centimeter	1.5432 "
Centigram	1-100	10 cubic millimeters	0.1543
Milligram	1-1000	1 cubic millimeter	0.0154 "

[House Joint Resolution No. 44.]

JOINT RESOLUTION

To prevent the removal of certain insane persons from one district asylum to another.

WHEREAS, By an act recently passed by the general assembly the insane asylum districts of the state have been changed; and,

WHEREAS, It will entail great expense on the state to remove the insane patients of the several counties, to the asylums of their respective districts; and,

WHEREAS, The removal of said patients will tend to increase their mental disability, and occasion great distress to their friends and relations; therefore,

Be it resolved by the General Assembly of the State of Ohio, That no removals of such patients be made but that they be retained in such district asylums as they now are.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Adopted May 14, 1878.

[Senate Joint Resolution No. 59.]

JOINT RESOLUTION

Requesting the secretary of state to return H. B. No. 41, (municipal code.)

WHEREAS, It appears that in enrolling H. B. No. 41 (now known as "an act to amend, revise, and consolidate the statutes relating to municipal corporations, to be known as title twelve, part one of the act to revise and consolidate the statutes of Ohio,") the clerk has omitted the enacting clause therefrom; therefore,

Be it resolved by the General Assembly of the State of Ohio, That the secretary of state with whom said act was on yesterday deposited, be and he is hereby requested and authorized, to return said act to this general assembly for the purpose of having same correctly enrolled by inserting said enacting clause so omitted therefrom.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Adopted May 14, 1878.

[Senate Joint Resolution No. 57.]

JOINT RESOLUTION

Relative to the adjournment of the regular session of sixty-third general assembly.

Be it resolved by the General Assembly of the State of Ohio, That this general assembly adjourn on Wednesday, May 15, 1878, at 9 o'clock A.M., to convene on Tuesday, January 7, 1879, at 3 o'clock P.M.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Adopted May 14, 1878.

[House Joint Resolution No. 54.]

JOINT RESOLUTION

To permit the Tyndall association to arrange a time ball on the state house.

Be it resolved by the General Assembly of the State of Ohio, That the Tyndall association of the city of Columbus be permitted to arrange a time ball on the state house: provided, that it shall be done under the supervision of the adjutant-general, and to be no expense to the state, all damages done, if any, to be repaid by the association.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 15, 1878.

[House Joint Resolution No. 51.]

JOINT RESOLUTION

Providing for distribution of the debates of the constitutional convention.

Resolved by the General Assembly of the State of Ohio, That the eighteen hundred copies or sets of the debates of the constitutional convention of the years 1873 and 1874, now deposited in the office of the secretary of state, shall be distributed as follows: To each member of said convention three copies; to the members of the sixty-third general assembly three copies each; and to the members of the sixty-second general assembly three copies each; the remainder to remain in charge of the secretary of state, and be disposed of as may be hereafter determined. The copies for the members of the convention and of the general assembly shall be boxed and forwarded to their order by the secretary of state, in the same manner and by the same authority as the report of the secretary of state is distributed to members of general assembly. The joint resolution providing for the binding and distribution of said debates, adopted April 12, 1877, be and the same is hereby rescinded.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Passed May 15, 1878.

[Senate Joint Resolution No. 61.]

JOINT RESOLUTION

Relative to the distribution of volume four (zoölogy and botany) of the geological survey.

Be it resolved by the General Assembly of the State of Ohio, That the volume of the reports of the geological survey, known as the volume on zoölogy and botany, the publication of which has been provided for by this general assembly, be distributed as follows: Two hundred and fifty copies, each, for the geological corps; five hundred copies for the state library; and the remainder for the present general assembly, to be divided equally among the members thereof. That there shall be deposited in the township library in each county of the state, one copy each of this report by the member representing the same in this general assembly.

That the secretary of state be and he is hereby directed to have boxed up at the state bindery the number of the above named volumes to which each member is entitled, and ship the same to his address; and the secretary of state is hereby directed to pay the charges for shipping the same out of the amount appropriated for the distribution of the laws, journals, and public documents.

JAMES E. NEAL,
Speaker of the House of Representatives.
JABEZ W. FITCH,
President of the Senate.

Adopted May 15, 1878.

OFFICE OF THE SECRETARY OF STATE,
COLUMBUS, OHIO, *September* 7, 1878.

I, Milton Barnes, Secretary of State of the State of Ohio, do hereby certify that the foregoing general and local laws and joint resolutions are correctly copied from the original rolls on file in this office.

MILTON BARNES,
Secretary of State.

JUDGES OF THE COURT OF COMMON PLEAS—1877–1878.

District.	Sub-div.	Counties.	Names and Post-office.	Term. Commenced.	Term. Expires.
1		Hamilton	William L. Avery, Cincinnati	Feb. 12, 1877	Feb. 12, 1882
			Joseph Cox, "	Feb. 12, 1877	Feb. 12, 1882
			Nicholas Longworth, "	Feb. 12, 1877	Feb. 12, 1882
			Robert A. Johston, "	Nov. 6, 1876	Nov. 6, 1881
			Jacob Burnet, "	Nov. 6, 1876	Nov. 6, 1881
2	1	Butler, Preble, Montgomery, Darke	Alex. F. Hume, Hamilton	Feb. 12, 1877	Feb. 12, 1882
			Henderson Elliott, Dayton	Nov. 6, 1876	Nov. 6, 1881
			David L. Meeker, Greenville	May 11, 1873	May 13, 1878
2	2	Champaign, Miami	Henry H. Williams, Troy*	Dec. 3, 1877	Dec. 3, 1882
2	3	Warren, Clinton, Greene, Clarke	James M. Smith, Lebanon	Feb. 12, 1877	Feb. 12, 1882
			Azariah W. Doan, Wilmington	April 12, 1875	April 12, 1880
			Moses Barlow, Xenia	Feb. 9, 1874	Feb. 9, 1879
			James S. Goode, Springfield	April 12, 1875	April 12, 1880
3	1	Logan, Union, Hardin	John L. Porter, Marysville	Feb. 12, 1877	Feb. 12, 1882
3	2	Shelby, Auglaize, Allen, Mercer, Van Vert, Putnam	Edward M. Phelps, St. Mary's	May 10, 1874	May 10, 1879
			James McKenzie, Lima	Feb. 9, 1874	Feb. 9, 1879
3	3	Paulding, Defiance, Williams, Fulton, Henry	Selwyn N. Owen, Bryan	Feb. 12, 1877	Feb. 12, 1882
3	4	Seneca, Hancock, Wyandot, Crawford, Marion, Wood	James Pillars, Tiffin	May 4, 1873	May 4, 1878
			Thomas Beers, Bucyrus	Feb. 12, 1877	Feb. 12, 1882
4	1	Lucas, Ottawa, Sandusky, Erie, Huron	Thomas P. Finefrock, Fremont	Oct. 28, 1874	Oct. 24, 1879
			Reuben C. Lemmon, Toledo	Oct. 24, 1874	Feb. 9, 1880
			Cooper K. Watson, Sandusky	Feb. 12, 1877	Feb. 12, 1882
			Birdseye W. Rouse, Toledo	May —, 1876	May —, 1881
4	2	Lorain, Medina, Summit	Newell D. Tibballs, Akron	May 1, 1876	May 1, 1881
			John C. Hale, Elyria	Feb. 12, 1877	Feb. 12, 1882
4	3	Cuyahoga	Darius Cadwell, Cleveland	Feb. 9, 1874	Feb. 9, 1879
			Jesse H McMath, "	Nov. 1, 1875	Nov. 1, 1880
			James M. Jones, "	Nov. 1, 1875	Nov. 1, 1880
			Edwin T. Hamilton, "	Nov. 1, 1875	Nov. 1, 1880
			Gershom M. Barber "	Nov. 1, 1875	Nov. 1, 1880
			Samuel B. Prentiss, "	Feb. 12, 1877	Feb. 12, 1882
5	1	Clermont, Brown, Adams	Allen T. Cowen, Batavia	Feb. —, 1878	Feb. —, 1883
			David Tarbill, Georgetown	Feb. 12, 1877	Feb. 12, 1882

*Appointed to fill vacancy caused by death of George D. Burgess.

COMMON PLEAS JUDGES—Continued.

District.	Sub-div.	Counties.	Names and Post-offices	Term. Commenced.	Term. Expires.
5	2	Ross Highland Fayette	Thad. A. Minshall, Chillicothe Samuel F. Steel, Hillsborough	Oct. —, 1876 Feb. 12, 1877	Feb. 12, 1879 Feb. 12, 1882
5	3	Franklin	Ed. F. Bingham, Columbus John L. Green, Columbus E. P. Evans, Columbus	May 11, 1877 Feb. 12, 1877 May 6, 1878	May 13, 1883 Feb. 12, 1882 May 6, 1883
5	4	Pickaway Madison	S. W. Courtright, Circleville	May 3, 1875	May 3, 1880
6	1	Licking Knox Delaware	Samuel M. Hunter, Newark John Adams, Mt. Vernon	Feb. 12, 1877 Feb. 12, 1877	Feb. 12, 1882 Feb. 12, 1882
6	2	Morrow Richland Ashland	Moses R. Dickey, Mansfield Thomas J. Kenney, Ashland	Feb. 12, 1877 Sept. 19, 1874	Feb. 12, 1882 Feb. 10, 1879
6	3	Wayne Holmes Coshocton	Chas. C. Parsons, Sr., Wooster C. F. Voorhees, Millersburgh	Feb. 12, 1877 Feb. 12, 1878	Feb. 12, 1882 Feb. 12, 1883
7	1	Fairfield Perry Hocking	Silas H. Wright, Lancaster	Feb. 12, 1877	Feb. 12, 1882
7	2	Jackson Vinton Pike Scioto Lawrence	Porter Du Hadway, Jackson J. J. Harper, Portsmouth	Feb. 9, 1874 Feb. 12, 1877	Feb. 9, 1879 Feb. 12, 1882
7	3	Gallia Meigs Athens Washington	Samuel S. Knowles, Marietta* Jos. P. Bradbury, Pomeroy	Oct. 25, 1875 Feb. 12, 1877	Feb. 12, 1878 Feb. 12, 1882
8	1	Muskingum Morgan Noble Guernsey	William H. Frazier, Caldwell Lucius P. Marsh, Zanesville	Feb. 12, 1877 Aug. 3, 1874	Feb. 12, 1882 Aug. 3, 1879
8	2	Belmont Monroe	William Okey, Woodsfield	Feb. 12, 1877	Feb. 12, 1882
8	3	Jefferson Harrison Tuscarawas	J. Patrick, Jr., N. Philadelphia	Feb. 12, 1877	Feb. 12, 1882
9	1	Stark	Seraphim Meyer, Canton	Feb. 12, 1877	Feb. 12, 1882
9	2	Trumbull Portage Mahoning	Ezra B. Taylor† Philo P. Conant, Ravenna	Mar. 16, 1877 Feb. 9, 1874	Feb. 12, 1878 Feb. 10, 1879
9	3	Geauga Lake Ashtabula	Lahan S. Sherman, Ashtabula H. B. Woodbury, Jefferson	Feb. 12, 1877 Jan. 25, 1876	Feb. 12, 1882 Jan. 25, 1881
9	4	Carroll Columbiana	Peter A. Laubie, Salem	Nov. 1, 1875	Nov. 1, 1880

*Re-elected October, 1877.

† Vice F. G. Servis, deceased. Elected October, 1877, for term of five years beginning February 12, 1878.

TIMES OF HOLDING COURTS IN OHIO IN 1878.

FIRST DISTRICT.

District Court.

Hamilton, April 1, October 7.

Common Pleas.

Hamilton, January 7, June 3, November 4.

SECOND DISTRICT.

District Court.

Butler, April 8; Clinton, April 8; Warren, April 15; Champaign, April 18; Montgomery, April 22; Clarke, April 22; Greene, April 29; Darke, May 6; Preble, May 13 Miami, May 6.

Common Pleas.

Butler, January 7, May 13, October 14.
Montgomery, January 7, May 13, October 14.
Darke, January 7, May 20, October 14.
Clinton, January 7, May 27, October 14.
Warren, January 7, May 27, October 14.
Clarke, January 14, May 27, October 14.
Greene, January 7, May 20, October 14.
Champaign, January 14, May 20, October 14.
Miami, February 18, June 17, November 18.
Preble, March 4, June 10, November 25.

THIRD DISTRICT.

District Court.

Allen, January 31; Auglaize, January 21; Crawford, March 28; Defiance, March 19; Fulton, March 14; Hardin, January 14; Hancock, April 3; Henry, March 16; Logan, January 8; Marion, April 1; Mercer, January 23; Paulding, March 21; Putnam, January 24; Seneca, April 5; Shelby, January 17; Union, January 2; Van Wert, January 25, Williams, March 12; Wood, March 25; Wyandot, March 27.

Common pleas.

Allen, April 1, June 10, November 11.
Auglaize, February 4, April 22, October 14.
Crawford, January 2, May 1, September 9.
Defiance, January 14, May 13, September 30.
Fulton, February 11, June 10, October 28.
Hardin, March 5, May 21, October 15.
Hancock, January 21, May 21, October 1.
Henry, January 28, May 27, October 14.
Logan, April 2, June 11, November 12.
Marion, January 29, May 28, October 9.
Mercer, March 18, May 27, December 2.
Paulding, January 8, May 7, September 24.
Putnam, February 4, April 29, September 9.
Seneca, February 11, June 11, October 22.
Shelby, March 4, May 20, October 14.
Union, February 4, April 29, September 9
Van Wert, February 25, May 6, October 28.
Williams, February 20, June 19, November 6.
Wood, January 2, May 1, September 9.
Wyandot, February 18, June 17, November 4.

FOURTH DISTRICT.

District Court.

Erie, April 15; Huron, April 25; Lucas, April 1; Sandusky, March 18; Ottawa, April 29; Lorain, March 18; Medina, March [illegible]; Summit, March 28; Cuyahoga, March 18, September 2.

Common Pleas.

Erie, January 28, May 27, October 21.
Huron, February 4, May 13, November 18.
Lucas, January 2, May 6, October 14.
Sandusky, January 2, March 4, October 9.
Ottawa, January 7, May 6, September 30.
Lorain, January 28, May 27, October 14.
Medina, January 7, May 6, September 16.
Summit, January 7, May 6, September 23.
Cuyahoga, January 7, March 4, May 6, September 2, November 4.

FIFTH DISTRICT.

District Court.

Madison, March 26; Fayette, April 22; Clermont, September 20; Franklin, March 30; Adams, September 3; Highland, September 25; Pickaway, April 15; Brown, September 6; Ross, September 30.

Common Pleas.

Adams, January 15, May 7, October 15.
Clermont, February 12, May 28, October 29.
Brown, February 12, May 28, November 5.
Highland, January 8, May 7, October 15.
Ross, January 8, May 7, October 15.
Fayette, February 12, June 4, November 19.
Franklin, January 7, April 15, September 8.
Madison, January 8, May 7, October 15.
Pickaway, February 5, June 4, November 12.

SIXTH DISTRICT.

District Court.

Delaware, July, 1; Knox, July 8; Licking, June 17; Ashland, June 17; Morrow, June 24; Richland, July 1; Coshocton, June 6; Holmes, June 3; Wayne, June 10.

Common Pleas.

Delaware, January 7, April 2, October 14.
Knox, February 18, May 6, November 18.
Licking, January 14, April 8, October 21.
Ashland, March 4, August 19, November 11.
Morrow, February 11, May 1, October 14.
Richland, March 25, September 2, December 2.
Coshocton, February 11, April 22, October 14.
Holmes, January 14, April 2, August 19.
Wayne, March 4, August 19, December 2.

SEVENTH DISTRICT.

District Court.

Washington, April 2, 3, 4, 5; Gallia, April 11, 12, 13; Scioto, April 18, 19, 20; Perry, September 3, 4, 5; Hocking, September 10, 11, 12; Athens, September 13, 14, 16; Meigs, April 6, 8, 9, 10; Lawrence, April 15, 16, 17; Pike, April 22; Fairfield, September 6, 7, 9; Jackson, September 20; Vinton, September 17, 18, 19.

Common Pleas.

Athens, February 11, May 27, October 22.
Fairfield, January 28, May 13, October 7.
Gallia, February 11, May 27, October 22.

Hocking, February 25, June 10, November 4.
Jackson, February 4, May 20, October 14.
Lawrence, February 26, May 28, October 22.
Meigs, January 14, April 29, September 23.
Perry, January 14, April 29, September 23.
Pike, March 4, June 17, November 11.
Scioto, January 21, April 29, September 23.
Vinton, January 14, April 29, September 23.
Washington, January 14, April 29, September 23.

EIGHTH DISTRICT.

District Court.

Belmont, April 3; Jefferson, August 27; Harrison, September 2; Tuscarawas, September 5; Guernsey, September 10; Monroe, September 17; Noble, September 20; Morgan, September 25; Muskingum, September 30.

Common Pleas.

Muskingum, January 8, April 22, November 11.
Morgan, March 5, June 11, October 9.
Noble, January 21, April 22, October 14.
Guernsey, February 19, May 21, November 12.
Belmont, January 15, April 23, October 29.
Monroe, March 5, June 11, October 9.
Jefferson, January 7, April 22, November 25.
Tuscarawas, February 4, May 20, October 29.
Harrison, March 4, June 17, October 9.

NINTH DISTRICT.

District Court.

Trumbull, April 8; Portage, April 15; Lake, March 25; Geauga, April 4; Ashtabula, March 18; Mahoning, March 25; Columbiana, April 8; Carroll, April 4; Stark, April 15.

Common Pleas.

Carroll, January 14, April 29, September 16.
Stark, January 14, April 29, September 16.
Columbiana, February 4, May 20, October 14.
Mahoning, January 14, May 6, September 9.
Trumbull, February 11, May 27, October 14.
Portage, January 14, May 6, September 9.
Lake, February 4, May 27, November 4.
Geauga, January 14, May 6, October 7.
Ashtabula, January 14, May 6, October 7.

OFFICE OF THE SECRETARY OF STATE,
COLUMBUS, OHIO, *December* 14, 1877.

I hereby certify that the above is correctly copied from the official lists returned to this office.

[SEAL.]

MILTON BARNES,
Secretary of State.

TABLE OF STATUTES REPEALED.

A list of the acts and parts of acts repealed by the statutes contained in this volume has been incorporated into the Table of repealed acts and sections published in the Appendix to Volumes 73 and 74. The Table has been prepared from notes of the Commissioners to Revise the Laws, and subjected to their revision. We are indebted to Trevitt W. Okey, one of their clerks, for the Table. Its importance justifies its insertion at this place.

All the general laws of the State are embraced in Swan & Critchfield's and Swan & Sayler's Statutes, and the volumes from 1869 to 1878, inclusive, being volume 66 to volume 75, inclusive. This Table shows the statutes and parts of statutes therein contained which have been repealed, and where the repealing acts may be found.

With respect to Swan & Critchfield's and Swan & Sayler's Statutes, the Table is so framed as to show at a glance each section repealed. Unless otherwise stated, the sections referred to are the numeral figures—those in parentheses if they are employed—and not the numeral letters. The sections on each page that have been repealed are given, and unless otherwise noted (as 1 S. & C., 546, section VI, repealed by S. & S., 340) the whole section is repealed. Thus, S. & S., 490, section 1, is cited as repealed by 72 v. 62; but there section (1), in numeral figures, embraces sections I and II in numeral letters, and 72 v. 62 repeals both sections. If the sections on a page are separated by a comma or commas, only the sections expressly named are repealed. If several consecutive sections on a page are repealed, only the first and last sections are given, separated by a dash. Although a section may extend to another or other pages, only the first page is given. Thus on page 14 of Swan & Sayler, sections (28), (29), and (30) occur, the latter section extending to page 15. The repeal of the three sections, which constitute the whole of both acts, is thus noted in the Table: Swan & Sayler, page 14, sections 28—30, Animals, Repealed, 71 v. 149..

Of the volumes (66 to 75, inclusive), subsequent to Swan & Sayler, where the sections repealed are not given, the whole act is repealed.

Where a statute or section is cited as repealed by another statute, it will be found in general that the repeal was effected directly by the act mentioned; but in some instances, where the repeal is effected by a stat-

ute, passed prior to 1868, which does not appear in Swan & Critchfield's or Swan & Sayler's Statutes, the reference is made to S. & C., or S. & S., or to a subsequent volume. In all such cases, the reference affords ready means of finding the first repeal.

Where the repealing statute has been repealed, a reference to the statute now in force has in general been inserted in parentheses. Sometimes references to other statutes are also thus included, so as to facilitate examination as to the changes in a section or provision, or as to supplementary legislation.

An earnest effort has been made to present a correct and full Table of the acts and parts of acts which have been repealed, whether the repeal has been express or by implication; but, in a few instances, an inquiry is suggested, and each one is left to determine for himself the extent of the repeal. How far 68 v. 45, section 1, is repealed by 72 v. 40, is an example. Notwithstanding this effort, it is scarcely to be expected that every slight modification or repeal by implication has been noted.

When acts or sections are superseded, they are referred to as repealed. No reference is made to any act or part of an act as being temporary or obsolete, as its condition in that respect will appear on its face.

The suggestion is made, that with this Table before him, any person can readily mark or cross out the statutes and parts of statutes, in his copy of the laws, which have been repealed, noting in the margin the place of repeal. In this way the present condition of the law upon any subject can be more readily and satisfactorily ascertained.

☞ THE LEFT HAND COLUMN IS THE *repealed*, THE RIGHT THE *repealing act or section*.

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1 SWAN AND CRITCHFIELD'S STATUTES—Continued.

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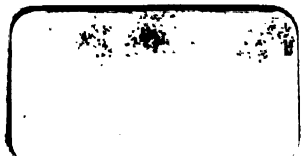
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